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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

Case No. 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier

In Re: Attorney's Fee Petition of Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

MOTION TO STAY APPEAL

Respondent's Initial Brief and Designation of Matter are due August 31, 2023. On August 29, 2023, Respondent filed a Motion for Certification with the Supreme Court of South Carolina. (*See* Exhibit A). Pursuant to Rules 240 and 263, SCACR, Respondent requests that this Court issue an order staying this appeal and holding all briefing deadlines in abeyance until the Supreme Court determines whether it will certify this matter. In the event the Supreme Court declines to certify this matter, Respondent requests an extension of thirty days from the Supreme Court's order to file its Initial Brief and Designation of Matter.

After consultation, Appellants have informed the undersigned that they want to review the Motion to Certify before taking a position on this Motion. However, at a minimum, Appellants consent to a 30-day extension of the briefing deadlines.

Respectfully Submitted,

s/ John L. Warren III
Greg Harris, SC Bar #7859
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August 29, 2023

Exhibit A

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John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

MOTION FOR CERTIFICATION

Pursuant to Rules 204(b) and 240, SCACR, Respondent South Carolina Workers' Compensation Commission ("the Commission") moves for certification of the above-captioned appeal for review by this Honorable Court. In support thereof, and as more fully set forth in the accompanying Memorandum, Respondent respectfully shows as follows:

1. This appeal involves a workers' compensation attorneys' fee dispute initiated by Appellants Preston F. McDaniel, Esquire, and John M. Milling, Esquire.
2. Appellants served the Notice of Appeal of the underlying Orders on February 3, 2023.

3. The Notice of Appeal did not name Claimant, Employer, or Carrier as Respondents and was only served on the Commission's Judicial Director, Amy Bracy; General Counsel, J. Keith Roberts; and Staff Attorney, Kristen McRee.

4. Appellants filed their Initial Brief on August 1, 2023.

5. Absent an extension, Respondent's Initial Brief is due August 31, 2023.

6. Under Rule 204(b), SCACR, and S.C. Code Ann. § 14-8-210(b), this Court may certify a case for review "before it has been determined by the Court of Appeals."

7. "Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance." Rule 204(b), SCACR.

8. As explained in the accompanying Memorandum, certification of this case is appropriate for the following reasons:

- a. This case involves important questions of administrative law, legal and judicial ethics, and constitutional law. Specifically, the Commission was the "Administrative Tribunal" from which Appellants have appealed. *See* Rule 202(b), SCACR. Appellants have improperly named the Commission as the Respondent in this appeal. As a party, the Commission is now required to defend its *own* judicial decision on appeal. Moreover, Appellants named the Commission's General Counsel and Staff Attorney as counsel-of-record in the Notice of Appeal. Both attorneys are court personnel who acted as judicial law clerks for the Commission.¹ *See* Canon 3(B)(9), CJC, Rule 501, SCACR (prohibiting court personnel from making "any public

¹ Given the potential ethical issues that have arisen from Appellants naming the Commission's court personnel as counsel-of-record, the Commission has hired outside counsel for this appeal.

comment that might reasonably be expected to affect its outcome or impair its fairness").

- b. Neither the Claimant, Employer, or Carrier are parties to this appeal. The underlying fee dispute involves funds paid by Employer/Carrier and awarded to Claimant. Appellants have put themselves in an adversarial position with Claimant, who has no representation in this appeal.
 - c. There is no relief that can be awarded to Appellants from the Commission. The funds in this case were paid by the Employer to Appellants' trust account. The Commission has never possessed these funds and would not be able to disburse the disputed fees to Appellants.
 - d. Given the importance of these threshold issues and the extensive prior litigation in this case, any opinion of the Court of Appeals would be appealed to this Court regardless of the outcome, which will further delay a final resolution of this case.
9. Appellant submits the attached Memorandum and exhibits in support of this Motion. *See* Rule 240(c)(2), (3), SCACR.

Respectfully Submitted,

s/ John L. Warren III
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August 29, 2023

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Case No. 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier

In Re: Attorney's Fee Petition of Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

MEMORANDUM IN SUPPORT OF MOTION FOR CERTIFICATION

Respondent, pursuant to Rule 204(b), SCACR, and S.C. Code § 14-8-210(b), and in accordance with Rule 240, SCACR, hereby submits this Memorandum in Support of its Motion for Certification of the above-captioned appeal to this Court.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY²

On July 28, 2016, Respondent South Carolina Workers' Compensation Commission ("the Commission") first awarded Claimant a lump sum payment of \$29,600.93 in back-owed Temporary Total Disability. (Ex. 2 at 3). On September 12, 2016, the Commission awarded Appellants a

² Respondent has submitted documents in support of this Motion. *See* Rule 240(c)(3). The attached Affidavit of J. Keith Roberts, General Counsel of the Commission, lists these documents and verifies that they are true and correct copies. (*See* Ex. 1).

\$9,866.98 contingency fee on that payment of compensation. (*Id.*). In April 2017, the Single Commissioner "awarded Claimant permanent and total disability benefits under § 42-9-10 and lifetime medical care under § 42-15-60." (*Id.*). The Employer appealed the Single Commissioner's award to the Commission. (*Id.*). "While on appeal, Claimant remained on a running award of weekly total disability benefits." (*Id.*). The Appellate Panel affirmed the Single Commissioner's award on October 17, 2017, and the Employer did not appeal to the Court of Appeals. (*Id.*; Ex. 3). Therefore, the Commission's award "became the law of the case on or about November 16, 2017." (Ex. 2 at 3).

On or about December 13, 2017, the Employer filed a Form 19 with the Commission, "showing that it had paid the award to Claimant in a lump sum in the amount of \$179,077.14." (*Id.*; Ex. 4). This payment "represented the commuted value, calculated in accordance with Reg. 67-1605, of the remaining weeks of total disability under § 42-9-10 that were due and payable at the time the award of the Full Commission became final." (Ex. 2 at 3).

On December 8, 2017, Appellants filed a Form 61 with the Commission, asking for a second contingency fee award of \$73,094.45. (Ex. 5). According to Appellants' Disbursement Sheet, which was attached to the Form 61, the claimed \$73,094.45 contingency fee award was to be withheld from the \$179,077.14 lump sum payment.³ (*Id.* at 3). This fee award would have been 40.82% of the lump sum payment. (*See* Ex. 2 at 4).

On January 9, 2018, the Single Commissioner sent the following email to Appellants:

I have reviewed your fee petition in Pamela Cartee v. SC Judicial Department several times. I have also reviewed the law I believe to be applicable. I can only find justification for a fee of \$59,632.69. If you wish to amend your Form 61 to reflect this amount as your fee, I will approve the fee petition. Otherwise, I am glad to set the matter for a hearing pursuant to the Act. I am happy to hear your position.

³ The Form 61 was later amended on March 2, 2018; however, Appellants sought the same contingency fee award. (*See* Ex. 6).

(Ex. 2 at 4). The Single Commissioner set the matter for a hearing on February 12, 2018. (*Id.*). After the hearing, on February 21, 2018, the Single Commissioner issued an Interim Order approving the disbursement of \$59,632.69, which is 33.3% of the lump sum payment. (Ex. 7); *see* S.C. Code Ann. Regs. 67-1205(C) ("An attorney may charge up to, but not more than, 33% of the total amount of compensation . . ."). In response to this Interim Order, and while the remaining fee request was still under consideration, Appellant Preston McDaniel sent the Single Commissioner a letter in which he threatened to file an action with this Court and a letter that stated that the Interim Order was "a slander on [his] name" and "a personal affront."⁴ (Ex. 8, 9).

On March 6, 2018, the Single Commissioner issued a Decision and Order denying Appellant's request for the additional \$13,461.76 in attorneys' fees. (Ex. 10). The Single Commissioner analyzed the issue under S.C. Code Ann. Regs. 67-1205(C)(2), which reads, in pertinent part: "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award." (*Id.*). Although the Single Commissioner awarded the Claimant permanent and total disability in April 2017, he noted that his decision was appealed and "[t]he determination of the award with finality could not be reached until [his] Order became the law of the case." (*Id.*). Once the award became final, the Employer paid the commuted value of the award, \$179,077.14, which entitled Appellants to 33.3% of that total award. (*Id.*).

⁴ This letter also insinuated, without any support, that the Single Commissioner was improperly discussing the legal issue with others. (*See* Ex. 9 at 1 ("I have refrained from saying this but as a reminder, it is improper for any judicial officer whether that be a Judge or Commissioner or otherwise to confer with anybody else or to seek legal advice on any matter pending before them without notifying the parties.")).

From March 7 through March 23, 2018, Appellant McDaniel sent letters and emails to the Single Commissioner, the Commission's Judicial Director, and the Commission's General Counsel. (Ex. 11). Appellant McDaniel repeatedly sought legal advice and threatened civil litigation in these communications. (*Id.*). Additionally, on March 20, 2018, Appellants filed a Form 30 Request for Full Commission Review. (Ex. 2 at 5). The Single Commissioner requested that the appeal be heard *en banc* "since the appeal involved novel issues of law and regarded attorneys' fees." (*Id.*).

Incredibly, Appellants then filed a Declaratory Judgment against the Commission in the Court of Common Pleas for Darlington County and obtained an *ex parte* Temporary Restraining Order ("TRO"). (Ex. 12; Ex. 13). Appellants served the Commission with the *ex parte* TRO on April 19, 2018.⁵ (Ex. 2 at 5). "Despite the prohibition by the court on the Commission taking any action on the Appeal, [Appellants] filed a Brief of Appellant on April 22nd, 2018." (*Id.*).

On May 30, 2018, the Commission issued a Decision and Order affirming the Single Commissioner. (Ex. 14). The Commission held that "[t]he amount of compensation that is to be awarded cannot be determined until the Decision and Order making that award is final." (*Id.* at 7). Furthermore, the Commission held "that it is not appropriate to allow an attorney to take back benefits that have *already been paid* to a Claimant to satisfy an attorney's fee." (*Id.* (emphasis added); *see id.* at 8 ("It would be unconscionable to require Claimants to pay to their attorneys the weekly benefits they were receiving before the attorney had successfully defended an appeal.")). The Commission emphasized that S.C. Code Ann. Reg. 67-1205(C)(2) only permits attorneys' fee to be awarded when an attorney "secures the payment of permanent disability." Thus, the

⁵ The Attorney General's Office represented the Commission in the civil action. (*Id.*). Eventually, the civil action was resolved pursuant to a confidential settlement agreement, which Appellants breached in their Initial Brief (Appellants' Br. at 10 (discussing the terms of the settlement)).

Commission held that an attorney "secures" that payment when the 30-day period to file an appeal from the Commission expires.⁶ (*Id.*).

The following day, Appellant McDaniel wrote the Commission a letter in which he stated that Appellant John M. Milling was not served with the May 30, 2018, Decision and Order and that Appellants would be filing a Petition for Rehearing. (Ex. 15). On June 1, 2018, the Commission's Judicial Director responded that Appellant "Milling was not served with a copy of the Decision and Order as he was neither a party to the December 8th, 2017 Form 61 Fee Petition nor the March 20th, 2018 Form 30 Request for Full Commission Review." (Ex. 16). However, the Judicial Director stated that the Commission would be "happy to send him a copy of the Decision and Order." (*Id.*).

On June 25, 2018, Appellants filed a Motion for Rehearing with the Commission. (Ex. 17). The Motion was denied the following day as it was not made within five days of the Decision and Order, as is required by S.C. Code Ann. Regs. 67-215(B). (Ex. 18). Appellants filed a Notice of Appeal in the Court of Appeals;⁷ however, they eventually withdrew the appeal. (*See* Ex. 19). Over the next few years, Appellants and the Commission litigated the civil Declaratory Judgment action. On June 29, 2022, the parties filed a Joint Stipulation of Dismissal. (Ex. 20).

On June 6, 2022, the Commission re-filed the May 30, 2018, Decision and Order affirming the Single Commissioner's ruling on Appellants' request for attorneys' fees. (Ex. 2). Appellants

⁶ Two Commissioners concurred in part and dissented in part and would have held that an attorney secures the payment of permanent disability on the date of the Commission's final Decision and Order rather than the date the 30-day period to appeal expired. (*Id.* at 14–20). Therefore, these two Commissioners would have permitted Appellants to recover attorneys' fees on an additional 30 days of benefits. (*See id.*). Importantly, however, no Commissioner adopted Appellants' argument.

⁷ Appellants filed a litany of motions during this appeal, including a motion to remand to the Commission for a ruling on their untimely Motion for Rehearing.

filed a timely Motion for Rehearing on June 10, 2022. (Ex. 21). The Commission held a hearing on September 19, 2022, and denied the Motion for Rehearing on January 4, 2023. (Ex. 22). Appellants then filed a Notice of Appeal, which was only served on the Commission's Judicial Director, Amy Bracy; General Counsel, J. Keith Roberts; and Staff Attorney, Kristen McRee. Moreover, the Notice of Appeal omitted the Claimant, Employer, and Carrier from the caption.

On February 9, 2022, the Court of Appeals sent a letter to counsel, which re-captioned the appeal to include the Claimant, Employer, and Carrier. On February 22, 2022, Appellant McDaniel sent a letter to the Court of Appeals, stating that "the re-captioning is not correct and [he] believe[s] it is also in violation of State law." In response, the Court of Appeals informed Appellants that no action would be taken on a letter. *See* Rule 240, SCACR. Appellants then filed a "Motion to Determine the Correct Caption of the Case Pursuant to SCACR" on March 15, 2023.

On March 21, 2023, the Commission filed a Motion to Dismiss and Motion for Relief of Counsel. The Commission argued, *inter alia*, that is not a proper party to the appeal, has never held or retained the disputed funds, and cannot be represented on appeal by its General Counsel and Staff Attorney.

On May 26, 2023, Chief Judge H. Bruce Williams denied the Motions⁸ in a brief Order without addressing any of the Commission's arguments.

STANDARD OF REVIEW

This Court may, in its discretion, "certify the case for review . . . before it has been determined by the Court of Appeals." Rule 204(b), SCACR. "Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major

⁸ The caption was modified to remove the word, "Defendants."

importance." *Id.*; *see also* S.C. Code Ann. § 14-8-210(b). "The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes." Rule 204(b), SCACR.

ARGUMENT

Respondent respectfully submits that this appeal involves legal principles of major importance and that certification to this Court is appropriate.

This appeal involves Appellants' claim to \$13,461.76 in attorneys' fees arising out of a workers' compensation case. The Single Commissioner denied Appellant's request for these additional fees on March 6, 2018. (Ex. 10). Since that time, Appellants have: **(1)** sent numerous inappropriate letters and emails to the Single Commissioner and the Commission's staff; **(2)** obtained an *ex parte* TRO that restrained the Commission from taking any action on their appeal of the Single Commissioner's decision; and **(3)** filed a Declaratory Judgment action against the Commission, which was litigated by the Attorney General's Office for more than *four years*. (Exs. 8, 9, 11–13, 20). Appellants have now named the Commission as the party-Respondent in their appeal of the Commission's final decision.

The Commission cannot be a party to this appeal, as it served in a judicial capacity as the Administrative Tribunal before whom the underlying dispute was decided. Bedrock principles of constitutional and administrative law prohibit the Commission from defending the merits of its final judicial decision on appeal to the Court of Appeals.⁹ Moreover, as a practical matter, there is no relief that can be awarded to Appellants from the Commission. The Commission has never had possession of the disputed funds, as they were paid by the Carrier to Appellants' trust account.

⁹ The Commission has been unable to locate any appeal involving the merits of an attorneys' fee award in which it has been named as a Respondent. Either the Claimant or the Carrier/Employer are the proper party-Respondents in an appeal of an attorneys' fee award. *See, e.g., Timothy Starnes v. Meritage Asset Mgmt, Inc. d/b/a Century Glass et al.*, No. 2022-001595 (S.C. Ct. App. 2023) (Briefs attached as Ex. 23).

Additionally, the parties who do have an interest in the disputed funds—i.e., Claimant, Employer, and Carrier—are not parties to this appeal. That is particularly troubling given the inherent conflict of interest between Appellants and Claimant.¹⁰

Given the important threshold questions of administrative law, legal and judicial ethics, and constitutional law that are implicated by this appeal, Respondent respectfully contends that certification is proper. Indeed, this Court has previously exercised its discretion to certify a case involving an award of attorneys' fees in a workers' compensation case. *See Baxter v. Martin Brothers, Inc.*, 368 S.C. 510, 514, 630 S.E.2d 42, 44 (2006) (resolving the question of whether a Commissioner has authority to award attorneys' fees as a litigation expense). Moreover, this Court has certified numerous appeals in order to remedy procedural or jurisdictional infirmities. *See, e.g., Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010) (certifying appeals from the Administrative Law Court ("ALC") and "dismiss[ing] the appeals because the order of the ALC is not immediately appealable"); *Pee Dee Reg'l Transp. v. S.C. Second Injury Fund*, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007) (dismissing a notice of appeal from the Commission that was "filed in the Court of Appeals and certified to this Court" and holding that "the appeal shall instead proceed as filed in the Court of Common Pleas").

Certification should also be granted as a matter of judicial economy and practicality. Appellants have been litigating this issue for more than five years. The Commission has been required to expend significant resources on this matter, including the retention of counsel for this appeal.¹¹

¹⁰ Given this conflict, a Guardian ad Litem or independent attorney would likely be in the best position to represent Claimant's interests.

¹¹ Appellants named the Commission's General Counsel and Staff Attorney as counsel-of-record in the Notice of Appeal. Both attorneys are court personnel who acted as judicial law clerks for

CONCLUSION

For the reasons discussed above and set forth in the accompanying Motion, Respondent respectfully requests that this Court exercise its discretion under Rule 204(b), SCACR, and S.C. Code Ann. § 14-8-210(b) and certify this appeal.

Respectfully Submitted,

s/ John L. Warren III

Greg Harris, SC Bar #7859

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the Commission. *See* Canon 3(B)(9), CJC, Rule 501, SCACR (prohibiting court personnel from making "any public comment that might reasonably be expected to affect its outcome or impair its fairness").

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John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

PROOF OF SERVICE

The undersigned employee of Law Office of Bill Nettles, attorney for Respondent South Carolina Workers' Compensation Commission, does hereby certify that service of the Motion for Certification, Memorandum in Support of Motion for Certification, and Exhibits 1–23 was made upon all counsel of record by electronic mail to:

- Preston F. McDaniel: preston@pfmcdlaw.com
- John M. Milling: johnmilling@bellsouth.net

By: 

John L. Warren

August 29, 2023



From: John Warren jw@billnettlelaw.com 
Subject: Cartee v. SCJD - Motion to Certify
Date: August 29, 2023 at 2:47 PM
To: preston@pfmcdlaw.com, johnmilling@bellsouth.net
Cc: Greg Harris greg@harriggasserlaw.com
Bcc: Roberts, Keith keroberts@wcc.sc.gov, Mcree, Kristen KMcree@wcc.sc.gov

Preston and John,

Please find attached and served upon you Respondent's Motion for Certification, Memorandum in Support of Motion for Certification, and the accompanying exhibits. These documents will be filed in the Supreme Court of South Carolina this afternoon.

Best,

-John Warren

John L. Warren III
Law Office of Bill Nettles
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Exhibits to Motion for Memorandum in
Motion...ion.pdf Certification.pdf Suppor...ion.pdf
[141 KB](#)

THE STATE OF SOUTH CAROLINA

Exhibit 1

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

AFFIDAVIT OF J. KEITH ROBERTS

PERSONALLY APPEARED before me, J. Keith Roberts, who, first being duly sworn,
deposes and says:

1. My name is J. Keith Roberts. I am over the age of 18, of sound mind, and capable of making this affidavit.
2. I am the General Counsel of the South Carolina Workers' Compensation Commission ("the Commission"), which is the Respondent in this appeal.
3. By virtue of my employment, I am familiar with the litigation that preceded this appeal in the Commission and the Court of Common Pleas for the Fourth Judicial Circuit. Those matters were captioned as follows:
 - *Pamela Cartee v. S.C. Judicial Department*, WCC File No. 1307922 (S.C. Workers' Comp. Comm'n)

- *Preston F. McDaniel and John M. Milling v. S.C. Workers' Comp. Comm'n*, No. 2018-CP-16-00334 (S.C. Ct. Com. Pleas)

4. I have reviewed the following documents that are submitted in support of Respondent's Motion for Certification:

- **Exhibit 2:** Decision and Order of the Commission, dated June 6, 2022
- **Exhibit 3:** Decision and Order of the Appellate Panel, dated October 17, 2017
- **Exhibit 4:** Form 19, dated December 11, 2017
- **Exhibit 5:** Form 61, dated December 8, 2017
- **Exhibit 6:** Revised Form 61, dated March 2, 2018
- **Exhibit 7:** Interim Order of Commissioner McCaskill, dated February 21, 2018
- **Exhibit 8:** Letter from Appellant Preston McDaniel to Commissioner McCaskill, dated February 21, 2018
- **Exhibit 9:** Letter from Appellant Preston McDaniel to Commissioner McCaskill, dated February 22, 2018
- **Exhibit 10:** Decision and Order of Commissioner McCaskill, dated March 6, 2018

- **Exhibit 11:** March 2018 Letters and Emails from Appellant Preston McDaniel to the Commission
- **Exhibit 12:** Appellants' Declaratory Judgment Complaint Against the Commission, dated April 17, 2018
- **Exhibit 13:** Temporary Restraining Order, dated April 17, 2018
- **Exhibit 14:** Decision and Order of the Commission, dated May 30, 2018
- **Exhibit 15:** Letter from Appellant Preston McDaniel to the Commission, dated May 31, 2018
- **Exhibit 16:** Email from the Commission to Appellant Preston McDaniel, dated June 1, 2018
- **Exhibit 17:** Appellants' Motion for Rehearing to the Commission, dated June 25, 2018
- **Exhibit 18:** Denial of Motion for Rehearing, dated June 26, 2018

- **Exhibit 19:** Order Dismissing Appeal from South Carolina Court of Appeals, dated July 31, 2019
- **Exhibit 20:** Joint Stipulation of Dismissal of Declaratory Judgment Action, dated June 29, 2022
- **Exhibit 21:** Motion for Rehearing to the Commission, dated June 10, 2022
- **Exhibit 22:** Order Denying Motion for Rehearing, dated December 20, 2022
- **Exhibit 23:** Appellate Briefs in *Timothy Starnes v. Meritage Asset Management, Inc.*, No. 2022-001595 (S.C. Ct. App. 2023)


5. Each of the above-listed exhibits is a true and correct copy of the original document.

FURTHER AFFIANT SAYETH NAUGHT.

SWORN TO BEFORE ME THIS

29th day of August, 2023


Affiant's Signature


Notary Public for South Carolina

Commission Expires: 9/30/2029

Exhibit 2

**DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO.: 1307922

Pamela O. Cartee,

Claimant,

v.

S.C. Judicial Department,

Employer,

&

State Accident Fund

Carrier,

**Hearing held in Richland County,
South Carolina on May 21st, 2018.**

**Appearances: Mr. Preston F. McDaniel, on his own behalf.
No appearance was made by the Claimant.
No appearance was made by Defendants.**

Purpose of Hearing: To resolve the dispute of Attorney Fees and Costs.

Filed: June 6, 2022

STATEMENT OF THE CASE

This matter comes before the Workers' Compensation Commission on appeal from a Decision and Order of the single Commissioner dated March 6th, 2018, denying the Petition for Additional Attorneys' Fees requested by Claimant's attorney, Preston McDaniel ("Counsel") on his Form 61. The purpose of this Hearing is to determine an appropriate award of attorneys' fees. The merits of the underlying claim were decided by Decision and Order of the Appellate Panel dated October 17th, 2017.

ORDER OF THE SINGLE COMMISSIONER

On March 6th, 2018, the single Commissioner made the following Findings of Fact and Rulings of Law:

1. The question at bar is whether Claimant's Counsel is entitled to additional requested attorney's fees.
2. Determination of this question rests in the plain reading of Regulation 67-1205(c)(2) which reads in part, "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."
3. I cannot find any persuasive authority for an award beyond that amount. I awarded the Claimant permanent and total disability on 04/13/17. While that award was on appeal, the case was not final and, as such, it would be premature to determine an award. Additionally, while on appeal, that Order could have been awarded to a greater award or a lesser award. The Full Commission could have vacated my Order and remanded the case for a hearing de novo. The determination of the award with finality could not be reached until my Order became the law of the case.
4. Once my order was the law of the case, The Defendants then paid the Claimant the commuted value of the award - \$179,077.14. The Form 19 reflects this payment. Based on the payment, Claimant's counsel is entitled to an attorney's fee of 33.3% of that amount which is \$59,632.69. I have previously ordered payment of that amount. I cannot find and counsel has not submitted any authority which supplants Regulation 67-1205(c)(2). As such, the payment of any additional attorney's fees must be consistent with 67-1205(c)(2).

Therefore, the petition for additional attorney's fees is denied.

DECISION OF THE COMMISSION

Based on our review of the record and consideration of the position of Counsel, we make the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. Counsel first secured compensation payable to the Claimant in the form of a lump sum payment of back-owed Temporary Total Disability by Order dated July 28th, 2016. Counsel secured the payment of compensation in the amount of \$29,600.93. On September 12th, 2016, the Commission awarded contingency attorneys' fees to Counsel in the amount of \$9,866.98, to be withheld from the amount awarded to Claimant in accordance with Reg. 67-1205(C)(2).
2. Counsel continued to represent Claimant. On April 17th, 2017 the single Commissioner awarded Claimant permanent and total disability benefits under § 42-9-10 and lifetime medical care under § 42-15-60. Defendants appealed the award to the Commission. While on appeal, Claimant remained on a running award of weekly total disability benefits. On October 17th, 2017, the Appellate Panel fully affirmed the award of the single Commissioner. Defendants did not seek an appeal of the award in accordance with § 42-17-60, and the award of the Full Commission became the law of the case on or about November 16th, 2017.
3. On or about December 13th, 2017, Defendants filed a WCC Form 19 with the Commission, showing that it had paid the award to Claimant in a lump sum in the amount of \$179,077.14. The Form 19 showed that Claimant had received 230 weeks of total disability benefits, paid weekly, that terminated on December 1st, 2017. The \$179,077.14 payment represented the commuted value, calculated in accordance with Reg. 67-1605, of the remaining weeks of total disability under § 42-9-10 that were due and payable at the time the award of the Full Commission became final.
4. On December 8th, 2017, Counsel filed a Form 61 attorney fee petition, asking for the Commission to award him a second contingency fee in the amount of \$73,094.45. According to the disbursement statement provided by Counsel, this amount was to be

withheld from the \$179,077.14 awarded to Claimant, purportedly pursuant to Reg. 67-1205(C)(2). \$73,094.45 represents 40.82% of \$179,077.14. Counsel asserts he is entitled to an award of attorneys' fees of 33.3% of all benefits paid to Claimant post-maximum medical improvement.

5. On January 9th, 2018, the single Commissioner sent an email to Counsel stating the following

I have reviewed your fee petition in Pamela Cartee v. SC Judicial Department several times. I have also reviewed the law I believe to be applicable. I can only find justification for a fee of \$59,632.69. If you wish to amend your Form 61 to reflect this amount as your fee, I will approve the fee petition. Otherwise, I am glad to set the matter for a hearing pursuant to the Act. I am happy to hear your position.

6. On January 8th or 9th 2018, Counsel sent a letter to the single Commissioner wherein he averred that he had come in person to the Commission three times without notice in an attempt to initiate communication with the Commissioner regarding the Petition for Attorneys' Fees currently pending before the Commissioner for adjudication. The single Commissioner declined to communicate with him about the matter under review.
7. On January 17th, 2018, the single Commissioner issued a Hearing Notice, setting the matter for the next available date, which was February 12th, 2018.
8. The Hearing was conducted on February 12th, 2018. Counsel was given the opportunity to submit evidence and argue his position.
9. On February 21st, 2018, the single Commissioner issued an Interim Order approving disbursement to Counsel of the amount of fees not in dispute.
10. On February 21st, 2018, Counsel sent a letter to the single Commissioner threatening to "take this matter up with the Supreme Court".
11. On February 22nd, 2018, Counsel sent a letter to the single Commissioner stating that he would hold off on filing anything with the courts if the Commissioner would engage in communication with him about the matter under review.
12. On March 2nd, 2018, Counsel sent a revised Form 61 that changed the amount of the final award listed from the total amount of all benefits, both temporary and permanent, paid, to only the amount of benefits paid post-MMI, but asked for the same amount, \$73,094.45, to be awarded as attorneys' fees.

13. On March 6th, 2018, the single Commissioner issued his Decision and Order Denying the Petition for Additional Attorneys' Fees.
14. On March 7th, 2018, Counsel sent a letter to the single Commissioner reiterating his threat to file litigation with the courts.
15. On March 13th, 2018, Counsel sent a letter to the Commission's Judicial Director, asking her for legal advice.
16. On March 15th, 2018, the Commission's Judicial Director sent an email to Counsel stating "If you file a WCC Form 30 appealing an award of attorneys' fees, the Commission will set the matter for a Hearing in accordance with Section 42-17-50. All parties of record, and the Claimant individually, should be served with any appellate documents."
17. On March 20th, 2018, Counsel filed a WCC Form 30 Request for Full Commission Review, raising seven grounds for appeal.
18. In accordance with longstanding Commission policy, the single Commissioner requested that the appeal be heard En Banc in accordance with Reg. 67-709(B)(1), since the appeal involved novel issues of law and regarded attorneys' fees.
19. On March 23rd, 2018, Counsel sent an email to Commission's General Counsel asking for a legal opinion, and again threatening civil litigation.
20. On April 19th, 2018, Counsel served the Commission with a Temporary Restraining Order Issued Without Notice Pursuant to Rule 65(B), SCRPC, restraining the Commission from taking further action on the Appeal filed by Counsel, that was issued by the Court of Common Pleas for the 4th Judicial Circuit. Despite the prohibition by the court on the Commission taking any action on the Appeal, Counsel filed a Brief of Appellant on April 22nd, 2018.
21. Also on April 19th, 2018, Counsel served the Commission with a Summons and Complaint, listing Counsel in his personal capacity as the Plaintiff and the Commission as Defendants. That matter was referred to the South Carolina Attorney General's Office for defense, and, as of the date of this Decision and Order, is currently pending before the Court of Common Pleas for the 4th Judicial Circuit on Defendant's Motion to Dismiss.
22. On April 27th, 2018, the Temporary Restraining Order expired pursuant to its terms and has not been extended. The Commission is unaware at the time of drafting of any legal prohibition on its issuance of this Decision and Order.

CONCLUSIONS OF LAW

1. Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission. S.C. Code Ann. § 42-15-90 (1976).
2. Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly. S.C. Code Ann. § 42-3-185 (1976).
3. Pursuant to 42-1-100 "compensation" is the money allowance *payable* to an employee or to his dependents.
4. Pursuant to Regulation 67-1205(B) "If the parties agree to a contingent fee contract, the fee is deemed reasonable when the following requirements are met and the requested fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee." S.C. Code Regs. 67-1205(B).
5. The Act requires that "as used in this Title, unless the context otherwise requires, the terms dealt with in §§ 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections." S.C. Code Ann. § 42-1-20.
6. The first sentence of R.67-1205(C) states that "[a]n attorney may charge up to, but not more than, 33.3% of the total amount of *compensation*, except in the following situations, where the attorney shall set the fee as instructed." Reg. 67-1205(C) (Emphasis added).
7. "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439,445 (2009). "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*¹

¹ The abuse of discretion standard is the standard of review to be followed by the courts on appeal; it is not the standard followed by the Commission in this review. The standard of review on Review and Rehearing by the Commission is set forth in § 42-17-50, which is the standard of review applied by the majority in this decision.

8. The single Commissioner held "The determination of the award with finality could not be reached until my order became the law of the case." We concur. This is a Conclusion of Law that the single Commissioner made, as he is authorized to do under § 1-23-350. The amount of compensation that is to be awarded cannot be determined until the Decision and Order making that award is final.
9. In a footnote to its Decision, the South Carolina Court of Appeals held

Essentially, worker's compensation benefits accrue along a time continuum: TTD benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. See S.C.Code Ann. §§ 42-9-10, -20, -30 (1976); S.C.Code Ann. § 42-9-260 (1996); 25A S.C.Code Ann.Reg. 67-507 (1990) (repealed by 21 S.C.Reg., No. 6, Part 2 at 439, effective June 27, 1997); *O'Banner v. Westinghouse*, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (Ct.App.1995). To require an employer to prove a claimant's disability ended before terminating TTD benefits dilutes the distinction between temporary and permanent disability payments, and it dilutes MMI as the definitive moment when a transition between the two different types of payments is accomplished.

Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999).

10. The language cited from *Hendricks*, above, makes it clear that we cannot award attorneys' fees in the manner requested by Counsel. Post-MMI benefits may be awarded as permanent disability benefits. However, Credit paid to the Employer/Carrier for benefits overpaid is not money allowance payable as described in section 42-1-100, and any funds allocated from the award for the payment of such credit may not be reduced to collect attorneys' fees. The footnote Counsel relies upon was favorably cited by our Supreme Court in *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2006). *Curiel* involved a dispute over the Commissioner's findings regarding maximum medical improvement and temporary total disability. *Curiel v. Environmental Management Services*, 376 S.C. 23, 30, 655 S.E.2d 482, 486 (2006). Neither *Hendricks* nor *Curiel* involved a dispute over an award of attorneys' fees. In the present case, we are not concerned with whether the benefits paid to Claimant post-MMI were temporary or permanent disability benefits. Our concern is that it is not appropriate to allow an attorney to take back benefits that have already been paid to a Claimant to satisfy an attorney's fee. *Hendricks* and *Curiel* do not provide guidance on this issue.

11. Once a Claimant has begun receiving weekly payment of disability for more than 150 days, Defendants cannot terminate payment of those benefits without an order of the Commission. S.C. Code Ann. § 42-9-260 (1976). This is true whether the weekly payments represent temporary or permanent disability benefits. The Act recognizes the hardship that would be placed on a Claimant if she were to lose the weekly disability payments she was receiving prior to an award of permanent disability benefits being finalized. While the award of permanent disability benefits is pending on appeal, Claimant is not secure in her award of permanent disability benefits. Her weekly payment of disability benefits are her only source of living wages prior to the appeal being finalized. It would be unconscionable to require Claimants to pay to their attorneys the weekly benefits they were receiving before the attorney had successfully defended an appeal. Further, such a result is not permitted by the provisions of law that, unlike *Curiel* and *Hendricks*, deal directly with attorneys' fees.
12. Reg. 67-1205(C)(2) does not entitle Counsel to 33.3% of all benefits paid to Claimant post-MMI; it entitles him to 33.3% of the "settlement or award". The award was not finalized until the time for appeal of the Full Commission's Decision and Order had run pursuant to § 42-17-60. The amount awarded at the time the award became final, \$179,077.14, is the amount of compensation from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.²
13. "Compensation" means "the money allowance *payable* to an employee . . ." S.C. Code Ann. § 42-1-100. (Emphasis added). The use of the adjective "payable" to modify "money allowance" limits the definition of "compensation" as used in Reg. 67-1205 to include only "money allowance" that is "payable", and not "money allowance" that has already been "paid" in the past.³

² The Majority disagrees with the Dissent that the "award" became finalized on the date the Full Commission issued its Decision and Order, October 17th, 2017, and that any benefits paid subsequent to this date are subject to be reduced to pay attorneys' fees. Workers' Compensation is unique in that certain circumstances, present in this case, allow a Claimant to be on a running award of weekly benefits while a decision and appeal are pending. It is the Majority's position that the benefits paid weekly to Claimant while the time for appeal had not been exhausted were still not "secure". The Full Commission's Decision and Order did not become the law of the case until the time for appeal had been exhausted. It was not until the Decision and Order became the law of the case that Defendants paid the full award and could properly terminate weekly payments of compensation, thus finalizing the award.

³ The Dissent raises the concern that our analysis overly narrows the definition and application of "compensation" in a manner that could impact our interpretation of this term as it is used in other parts of the Act. We are only analyzing

14. Counsel would have us award attorneys' fees from the "money allowance" that has already been "paid" to the Claimant. We decline to adopt this interpretation. Doing so would create the absurd result where an attorney could force his own client to pay back to the attorney weekly benefits the Claimant had already received. In this particular instance, the amount of permanent disability benefits awarded in the lump sum exceeded the amount of weekly benefits Claimant received from the date of MMI through the date the award was finalized. However, it is possible for the number of weeks in which a Claimant is receiving weekly benefits while the matter is pending on appeal to exceed the number of weeks awarded as permanent disability. Were we to adopt Counsel's position that all compensation paid post-MMI is subject to attorneys' fees, this would create instances where a Claimant would owe her attorney a portion of the benefits already "paid" to her, thus rendering the Claimant a debtor and her attorney her creditor. We hold that such an interpretation is not consistent with Reg. 67-1205 or the purpose of the Workers' Compensation Act. *See Cokeley v. Robert Lee, Inc.*, 197 S.C. 157, 14 S.E.2d 889, 893-4 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results.")

15. Reg. 67-1205(C)(2) provides "If the attorney *secures* the payment of permanent disability later, the attorney may charge up to, but not more than 33.3% of the *settlement or award*." Subsection (C)(2) does not entitle Counsel to 33.3% of the "permanent disability", it entitles him to 33.3% of the "award". In order for an attorney to be entitled to a contingency fee under subsection (C)(2), he must "secure" the payment of the compensation. The award of compensation was not "secure" until the attorney successfully defended the award to

"compensation" as it is used in Reg. 67-1205(C)(2) for the purposes of determining an award of attorney's fees. The term as it is used elsewhere in the Act will be analyzed as the context requires, consistent with § 42-1-20.

finality. At the time the award became final, the Defendants paid the commuted value of the outstanding benefits in the amount of \$179,077.14. It is this amount from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.

16. While Counsel advocates that Reg. 67-1205 entitles him to an award of attorneys' fees of 33.3% of the value of the permanent and total disability award at the time Claimant reaches MMI, we hold that Reg. 67-1205 only allows an award of attorneys' fees of 33.3% of the value of the permanent and total disability award remaining at the time the attorney "secures the payment of compensation."
17. We cannot apply Reg. 67-1205 in the strained manner advocated by Counsel. Reg. 67-1205 does not state that an attorney is entitled to 33.3% of the "permanent disability", it states the attorney is entitled to 33.3% of the "settlement or award".
18. "In doubtful cases, the application of these regulation shall be in favor of the injured employee." S.C. Code Ann. Regs. 67-201(B) (2014 Supp.) Should a court construe any terms in Reg. 67-1205 as doubtful, we find it is objectively in Claimant's favor to have the amount in dispute paid to her instead of her lawyer. Her lawyer has already collected \$69,499.57, and continues to practice law. Claimant, meanwhile, is permanently and totally disabled, and the balance of the award is all the money that can be provided by the Act for her to live on for the rest of her life.
19. The record is devoid of any evidence showing Commission policy is to award an attorney 33.3% of all post-MMI benefits when the Claimant continues to receive weekly benefits before the award is finalized. Counsel has the burden of proving he is entitled to the fee he is requesting. It is not the Commission's policy to grant a contingency fee to be deducted from all benefits paid post-MMI without taking into consideration when the award becomes final and when payment of the compensation is secured by the attorney's representation.
20. The Commission is prohibited by law from making any change to its policies or procedures regarding the approval of attorneys' fees without approval of the General Assembly. *See* S.C. Code Ann. § 42-3-185. If Counsel wants the policy changed to allow attorneys' fees to be deducted from all benefits paid post-MMI, he must secure such a change through the General Assembly.

21. The General Assembly gave sole authority to approve fees for attorneys to the Commission. See S.C. Code Ann. § 42-15-90. Section 42-15-90 reads, in pertinent part, "Attorney fees . . . for services under this title are subject to the approval of the commission" Section 42-15-90 must be read in context with § 42-3-185. Section 42-3-185 provides

Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly.

S.C. Code Ann. § 42-3-185 (1976, as amended).

It is clear from the two statutes, read together, that it is the intent of the General Assembly that changes in the manner in which the Commission approves attorneys' fees must be done with approval by the General Assembly in the method prescribed.

22. There is sound reasoning behind the General Assembly's decision to allow limitations not present in tort cases on the amount of the injured worker's benefits that could be taken to pay attorneys' fees. Benefits available under the Workers' Compensation Act are limited to those expressly provided in the Act. Remedies available at common law such as general damages, pain and suffering, loss of consortium, punitive damages, etc., are not available to the workers' compensation claimant. Thus a limitation on attorneys' fees is appropriate. The South Carolina Attorney General has long been of the opinion that § 42-15-90 protects society "from the wrongs to injured employees and their dependents that would likely follow if some restrictions were not placed on the costs of legal services rendered injured workers in the prosecution of their claims for compensation". S.C. Op. Atty. Gen. 185 (1986).

23. "The principal purpose of [§ 42-15-90] is to protect the workman from the charging of excessive fees". See S.C. Op. Atty. Gen. 185 (1986), *citing* 1936-37 S.C. Op. Atty. Gen., p. 299.

24. The requested fee in this particular case is unreasonable under Rule 1.5 of the South Carolina Rules of Professional Conduct. The Commission requires that requested attorneys' fees comply with the South Carolina Supreme Court Disciplinary Rules on

determining a reasonable fee. See S.C. Code Ann. Regs. 67-1205(A) and (B). Rule 1.5(a)(3) of the Rules of Professional Conduct and *Glasscock v. Glasscock* require when considering approval of an attorney's fee for the tribunal to consider "customary legal fees for similar service" and "the fee customarily charged in the locality for similar legal service". Counsel has not entered into the record or cited one single example of a fee similar to the one in which he is requesting having ever been awarded by the Commission. As such, we find his request is not for "customary legal fees for similar service".

25. Counsel asserts that it was somehow improper for the Commission to notice certain parties of the Hearings in this matter. We find no error, as Commission Hearings are open to the public in accordance with § 42-3-170. Defendants are clearly a party to the underlying claim.
26. Counsel implies that the single Commissioner somehow acted improperly by consulting with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities. First, we hold that the record is devoid of any evidence that the single Commissioner did so in this instance. Second, we hold that, had the single Commissioner consulted with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities, such action would have been wholly proper, as it is expressly permitted by the Code of Judicial Conduct. See Canon(3)(B)(7)(c), CJC, Rule 501 SCACR.
27. Counsel asserts that the single Commissioner did not handle his fee petition in a timely manner consistent with Reg. 67-1204(F) by not "immediately" scheduling a hearing. The single Commissioner found that the Form 61 did not comply with Reg. 67-1205 on January 9th, 2018. The Hearing Notice was issued eight days later on January 17th, 2018, the Hearing was held on February 12th, 2018, and the decision of the single Commissioner was issued on March 6th, 2018. We do not see how the single Commissioner could have disposed of the matter in a timelier manner, and hold that the single Commissioner fully and timely complied with the provisions of Reg. 67-1204(F).
28. We hold that Counsel has received adequate remuneration for his services in this case. Counsel was retained in April of 2014 and the award became final in November of 2017. On September 12th, 2016, he received \$9,866.88, and this Decision and Order awards him an additional \$59,632.69, for a total of \$69,499.57.

29. In Counsel's correspondence, briefs, and oral statements, Counsel repeatedly refers to the single Commissioner as a "lay commissioner." We find as a fact and rule as a matter of law that the Honorable H. Gene McCaskill is a Workers' Compensation Commissioner appointed and qualified in accordance with § 42-3-20. The Honorable H. Gene McCaskill has been appointed as a Workers' Compensation Commissioner on three occasions by two different Governors, and has been approved unanimously by the Senate on all three occasions. The Honorable H. Gene McCaskill is fully and lawfully qualified, competent, and capable of serving as a Workers' Compensation Commissioner.

ORDER

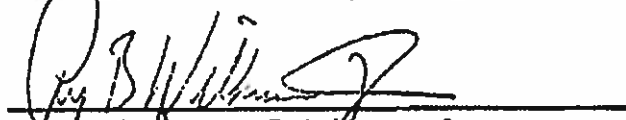
IT IS ORDERED that Counsel's request for attorneys' fees above and beyond \$59,632.69 is DENIED.

IT IS ORDERED that Counsel shall certify in writing to the Commission that he has paid \$13,461.76 to Claimant within thirty (30) days of the date of this Order.

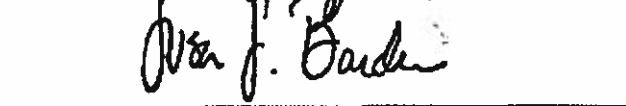
IT IS SO ORDERED!



Commissioner T. Scott Beck, Chairman



Commissioner Avery B. Winkerson, Jr.



Commissioner Susan S. Barden



Commissioner R. Michael Campbell, II

CONCURRING IN PART AND DISSENTING IN PART

We concur in part with the majority opinion and would affirm the Single Commissioner's finding that Claimant's award of benefits could not be determined with finality until the date of the Full Commission's Decision and Order on October 17, 2017, when the award became the law of the case. We respectfully dissent from the majority opinion and would reverse the Order of the Single Commissioner in this case on the issue of whether the attorney fees at issue are calculated from the date that the appeal time ran on the Full Commission Decision and Order and the commuted value of the remaining benefits were paid in a lump sum. We find that the attorney's fees in this particular matter are instead calculated from the date of the final order of the

Commission, which is the Full Commission Decision and Order dated October 17, 2017. We base our opinion on the following analysis below.

Supporting case law holds that, essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. *Smith v. NCCI, Inc.*, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006); *Curjel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d. 482 (2007). Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits. Maximum medical improvement terminating right to temporary total disability benefits is a factual determination by the Workers Compensation Commission. *Id.*

In this case, MMI was a controverted issue and the Single Commissioner's determination of MMI on October 17, 2016 signaled the end of Claimant's temporary benefits. While Claimant continued to receive weekly total disability benefits after the date maximum medical improvement as determined by the Single Commissioner. Claimant's determination of total and permanent disability was not awarded until October 17, 2017, the date of the Full Commission Decision and Order.

Counsel's argument that the date for the calculation of his attorney's fee award should be the date of maximum medical improvement, October 12, 2016, fails. In this case, Counsel had previously secured additional payment of temporary compensation for his client on a Form 15. Regulation 67-1205(c)(2) states, "If the attorney secures the payment of permanent disability later, the attorney may charge...up to but not more than 33.3% of the settlement or award."

The definition of award is set forth in Black's Law Dictionary. An award is "[a] final judgment or decision." The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989); *see also Hoxlt v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 407 (1991).

S.C. Code Ann. Section 42-17-50 provides for an "application for review" of a single commissioner's decision. Pursuant to the statute governing review, the Full Commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and if proper, amend the award. *Id.* The Full

Commission shall weigh the evidence as presented at the initial hearing and, if good grounds are shown, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *Pack v. State Dept. Of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009). Although it is logical for the Full Commission to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992); see also *Brayboy v. Clark Heating Co.*, 306 S.C. 56, 409 S.E.2d 767 (1991) (Full Commission may review an award of a single commissioner and make its own findings of fact and conclusions of law).

We find Counsel is entitled to attorney's fees as of October 17, 2017, the date of the Full Commission Decision and Order and is not subject to the 30 day appeal period. S.C. Code Ann. Section 42-17-60 states, "an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award ..., may appeal from the decision of the commission to the court of appeals." Section 42-17-50 goes on to state, "In case of an appeal from the decision of the commission on questions of law, the appeal does not act as a supersedeas and, after that time, the employer is required to make weekly payments of compensation... ." The thirty-day supersedeas provision of this section should be construed as requiring weekly payments provided for in the award of the Commission to continue pending determination of the employer's appeal. *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 115 S.E.2d 57 (1960). The legislature intended that weekly payments ordered in an award are to be made until the question at issue is fully determined upon appeal. *Bagwell v. Ernest Burrell, Inc.*, 227 S.C. 168, 87 S.E.2d 583 (1955).

In the present case, there was no appeal from the Decision and Order of the Commission granting Claimant permanent and total disability benefits. As such, the issue of whether or not there was a thirty (30) day supersedeas pending outcome of an appeal is moot. As there was no appeal from the Full Commission Decision and Order, the Findings of Fact and Conclusions of Law of the Full Commission were final and "fully determined" as of the date of the Full Commission Order on October 17, 2017. An award of the Commission is not effectuated until the final Decision and Order of the Full Commission is entered. In this particular matter, Counsel's attorney's fees should be calculated as of the date of the Commission's final Order.

“Every state has some type of provision for subjecting the claimants' attorneys' fees to the supervision of a commission or court handling compensation administration.” Lex K. Larson, *Larson's Workers' Compensation* § 133.01(1) (Matthew Bender, Rev. Ed.) Attorney's fees in South Carolina are "subject to the approval of the Commission." S.C. Code Section 42-15-90. The South Carolina Legislature has directed the Commission to supervise both medical payments and attorney's fees. In addition, the Workers' Compensation Commission has promulgated Regs. 67-1204 and 1205 in governing supervision of attorney's fees.

Regulation 67-1205(c) is applicable to this case and states an attorney may charge up to 33.3% of the total amount of compensation. As noted in the majority opinion, the definition of compensation includes the word "payable". The majority interprets this definition to limit the term "compensation" to only those payments that have not yet been paid. This interpretation strictly narrows the definition and practical application as to what compensation is. We find the term "payable" in the definition of compensation is broad and applies to any and all payments that were "payable" at their inception, even if at the time of the award some had already been paid.

We also look to case law governing statutory construction to define the term compensation as defined in S.C. Code Ann. Section 42-1-100. Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). Should compensation only be that payable in the future, it would change the characterization of payments of compensation that have already been paid, essentially creating a third class of compensation payments. There would be temporary compensation, permanent compensation previously paid, and permanent compensation to be paid in the future. There is no statutory or case law authority for such a designation. An example of a statute that could not be reconciled under the majority's interpretation is found in Section 42-9-10. This section provides that in no case may the period covered by the compensation exceed five hundred (500) hundred weeks (with exception). If compensation payments are only compensation when they are payable in the future, then the period of compensation under this statute would be indefinite. In addition WCC Forms 18 and 19 designate and report permanent compensation paid, not compensation payable in the future.

As noted above, the statutes governing review of a Single Commissioner's decision places the Full Commission in the same posture as the Single Commissioner for purposes of the review. The Full Commission is the ultimate fact finder. As such, any finding as to whether the Single

Commissioner abused his discretion would not be the applicable standard for the Full Commission, but rather the Court of Appeals or a higher court. *See Kiriakides v. School Dist. of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). As the ultimate finders of fact, the Full Commission must analyze the application of the traditional factors of review of an attorney's fee award.

The factors that should be reviewed in determining a reasonable attorney's fee in any matter are: (1) The nature, extent, and difficulty of the case; (2) The time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991).

With regard to the first *Glasscock* factor, the nature, extent and difficulty of the case, this case involved the pursuit and obtainment of a finding of "permanent and total disability." This is the maximum benefit that can be obtained in a workers' compensation matter, except for matters involving catastrophic injuries such as severe brain damage. In addition, the contested issues included whether Claimant was at maximum medical improvement and whether she was entitled to lifetime medical treatment despite competing medical opinions. Although the Record does not indicate the presentation of any novel issues, the parties' APA Submissions totaled 249 pages in addition to the deposition transcripts of Dr. Lembo and Dr. Healy.

As to the second *Glasscock* factor regarding time, Workers' Compensation attorneys are traditionally engaged with contingency contracts that are subject to Commission approval, so the factor of the number of hours expended by an attorney is not usually directly considered by the Commission. However, it may be relevant in the aspect of considering the complexity of a matter. Counsel cites in his Form 61A that he has hundreds of hours in this case. It is unknown how many hours may have been performed by Counsel for the increase in temporary compensation. It is noted that Counsel previously obtained a tangible result for the Claimant in increasing her compensation rate; a fee has already been approved by order of the Commission for that pursuit. It was calculated from the back payment of the increase in award. As indicated herein, future payments of temporary total are not subject to an award of attorney's fees by custom which is codified in Regulation 67-1205.


As to professional standing and experience of counsel, the third *Glasscock* factor, Counsel (McDaniel) regularly appears before the Workers' Compensation Commission exclusively

representing injured workers. His Form 61A filed with the Commission indicates that he has been practicing for over 41 years.

This matter involves that of a contingency contract as outlined in *Glasscock* factor number four. This is the method of payment customarily and traditionally before the Commission.

The determining factors in this matter involve what beneficial results were obtained and what is the customary legal fees/calculation applied by the Commission, which are the fifth and sixth *Glasscock* factors. The benefit obtained in this matter was not secured until the final award of the Commission. The award of attorney's fees is customarily calculated from the amounts that are secured by counsel in a case pursuant to an award. In most circumstances, including the facts of this underlying claim, amounts from a running award of weekly payments are not customarily subject to attorney's fees, as they are automated. The pivotal issue in the workers compensation award of attorney fees is what is customary. No matter what the characterization of the compensation is, temporary or permanent, the fees are granted to the amount of the award that is obtained by the efforts of the attorney. Attorney's fees are not traditionally granted to an amount based on a running award under the facts of this case. The Regulations cite specific situations in which the Commission notes that fees are not payable on a running award. For example, an award of attorney's fees are not made on continuing temporary total benefits or where a Claimant's attorney has defeated the termination of a running award. In this case, a fee was allowed on back temporary total disability benefits as the Claimant's attorney successfully obtained a beneficial increase; but, although the attorney obtained the increased, running award for the Claimant, he is not entitled to a fee of the continuing temporary compensation. This particular custom is cited within Regulation 67-1205(c)(2), itself. Again, R. 67-1205(c)(2) allows a fee of 33.3% of a later award or settlement. In this case, the benefit was not obtained until Counsel effectuated and secured the final award as stated above.

We find that due to the factors reviewed that the award of attorney's fees in this matter should be calculated as 33.3% of the amount awarded to Claimant as of the date of the final award of the Commission, which is the Full Commission Decision and Order dated October 17, 2017. For the reasons as set forth above, we would affirm in part and reverse in part the Order of the Single Commissioner.



Commissioner Melody L. James



Commissioner Aisha Taylor

Order Served via USPS:

<p>Preston F. McDaniel McDaniel Law Firm 1315 Elmwood Ave Columbia, SC 29201</p> <p>John M. Milling Attorney at Law P.O. Box 519 Darlington, SC 29532</p>	<p>Pamela O. Cartee 1825 Woodbine Drive Hartsville, SC 29550</p>
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 6, 2022

Exhibit 3

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

Pamela O. Cartee,

v.

S.C. Judicial Department,

AND

State Accident Fund,

EMPLOYEE,
CLAIMANT/RESPONDENT,
2nd APPELLANT,

EMPLOYER,

CARRIER,
DEFENDANTS/APPELLANTS
2nd RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on August 22, 2017 per
notices timely and properly served on all
parties of interest

Appellate Panel Decision and Order filed

October 17, 2017.

APPERANCES:

Claimant/Respondent represented by Preston F.
McDaniel, Esquire of Columbia, South
Carolina.

Defendants/Appellants represented by Sarah Alphin,
Attorney of Columbia, South Carolina.

This matter came before the Hearing Commissioner for hearing on September 6, 2016, on the basis of Claimant's Form 50 Request for Hearing. The Commissioner issued his Decision on April 13, 2017. As part of that Decision, the Hearing Commissioner made the following Findings of Fact, Conclusions of Law, and entered the following Award:

FINDINGS OF FACT

1. The Claimant suffered an admitted injury by accident arising out of and within the course and scope of her employment.

2. The Defendants have provided some medical care and treatment in this case. Due to the defendants not providing continuing medical care or local medical care after May 14, 2014, the Claimant sought other treatment with Dr. Joseph Healy on her own.

3. The Claimant asserts that she is permanently and totally disabled. She claims that she has problems with both hands and her cervical spine to the degree that she is unable to earn wages. Claimant also asserts, based on the opinion of Dr. Healy, that she is permanently and totally disabled.

4. Defendants contend that the Claimant is not at MMI and base that conclusion on the opinion of Dr. Nancy Lembo who they have designated as the authorized treating physician.

5. They contend that since the Claimant has yet to reach MMI, Claimant is, as of now, entitled only to continuing medical

care and treatment as directed by Dr. Lembo.

6. The record is replete with medical records of treatment the Claimant has undergone to include carpal tunnel releases that failed.

7. Claimant sought treatment on her own with Dr. Healy who is a neurologist in Florence. He has treated her for almost two years.

8. Claimant lives in Hartsville.

9. Claimant testified that she is 62 years old and worked as a court reporter for the Employer.

10. Claimant testified that she now could no longer do that job. Her ability to write and to type have been so severely impacted, she can no longer work as a court reporter.

11. Claimant also testified that her ability to perform the tasks of daily living has been severely impacted as well. She testified that she has great difficulty performing any task that requires hand dexterity or grip strength.

12. The Claimant underwent a Functional Capacity Evaluation which was administered by Tracy Hill, PT on November 23, 2015. Ms. Hill wrote of that evaluation, "Mrs. Cartee put forth a consistent effort during the evaluation. She qualifies for less than sedentary work...Mrs. Cartee does not meet the full physical requirements necessary for sedentary work due to her limited lifting ability and due to her limited sitting tolerance.

Sedentary work also requires the ability to use both hands for repetitive hand-finger actions and she does not have this ability."

13. The Claimant has seen Dr. Lembo for evaluation purposes. Dr. Lembo testified that she has seen the Claimant twice.

bout testing that needed to be done and testing that has already been performed.

15. While Dr. Lembo is an eminently qualified physician, it is clear to me from her deposition that she either hasn't been provided reports of testing already performed nor has testing been performed that she believes will give her information as to the Claimant's current condition.

16. It is also clear to me that there has been frustration on both sides as to testing and treatment.

17. Considering the above, I can only give limited weight to Dr. Lembo's opinion. She has only seen the Claimant twice and she doesn't have - for whatever reason - testing she believes necessary to formulate an opinion as to the Claimant's current medical condition. Her ability to opine as to whether the Claimant must be viewed in the context of her knowledge of the Claimant's case.

18. Additionally, I am troubled by the timeline of Dr.

Lembo's designation as the authorized treating physician. She first sees the Claimant on June 11, 2015 and then only sees her again - for the only other time she has seen the Claimant - on February 16, 2016. I am certain both sides could offer arguments as to why that is; but it does not change the fact that Dr. Lembo, who is the authorized treating physician, has seen the Claimant only twice.

19. Dr. Healy, however, has seen and treated the Claimant for almost two years. He is a specialist who is certainly qualified to treat the Claimant. Dr. Healy has provided medical care and treatment and the Claimant testified that she is pleased with the care he has provided.

20. Pursuant to an Interim Order the undersigned issued in this case, Dr. Healy saw the Claimant again on October 12, 2016. He wrote of that encounter, "I have previously stated the opinion that her current condition is permanent; and she will need medical care for the foreseeable future and most probably the remainder of her life (to provided symptomatic relief, to allow her to function and to try to maintain her current level of functioning); and that she is totally and permanently disabled from gainful full-time employment. After seeing her and reviewing her current condition, it is my opinion stated to a reasonable degree of medical certainty that she is at maximum medical improvement. Again, she will require medical care to

address her disabling symptoms stemming from this work-related injury and its aftermath.”

21. Subsequent to that opinion, the Defendants took the deposition of Dr. Healy on November 8, 2016. In that deposition, Dr. Healy affirmed his opinion stated above.

22. Dr. Healy has also opined that the Claimant may need physical therapy, massage therapy and pain management in the future to maintain her current level of function.

23. When I view the evidence as a whole and based on a preponderance of the evidence, the Claimant is permanently and totally disabled. She is 62 years old. The Claimant cannot per the FCE even qualify for sedentary work. She testified that she cannot return to her job and cannot do work or the tasks of daily living that requires dexterity and grip strength in her hands and fingers.

24. I find the Claimant to be very credible.

25. I find that the Claimant reached MMI on October 12, 2016.

26. Based on the testimony of Dr. Healy, I find that the Claimant’s cervical spine is causally related to this work-related accident. Again, I give the greatest weight to Dr. Healy’s opinion as the treating physician for the past many months.

27. Given her history with Dr. Healy and his familiarity

with her case, Dr. Healy is to be the authorized treating physician as to her hands and cervical spine.

28. Based on a review of the evidence, the opinion of Dr. Goldsmith notwithstanding, I cannot find where an authorized psychologist or any treating medical doctor has causally related the claimant's current psychological condition to her work-related accident and deny her request for benefits for psychological.

Claimant is also entitled to future medical care as set forth above and having been found to be entitled to an Award for total and permanent disability, she is entitled to lifetime medical care for all causally related medical care for the remainder of her life pursuant to the Act.

CONCLUSIONS OF LAW

As provided in S.C. Code §42-17-40, the following Conclusions of Law are made:

1. Under S.C. Code §42-9-10 and §42-1-120, total disability is defined under the Act for loss of earning capacity wherein based on the Claimant's age, education, background, experience and the physical facts of the injury, the jobs which the Claimant can perform are so limited in quality, quantity or dependability that a reasonably stable job market for those do not exist. Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. Dupont DeNemours Co.,

227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996).

2. Under S.C. Code §42-15-60, Claimant is entitled to lifetime medical care under §42-15-60 for total and permanent disability. Having been declared totally and permanently disabled, Ms. Cartee is entitled to all reasonable and necessary treatment and care during her lifetime which will affect a cure and provide relief for all conditions found to be causally related to the compensable injuries stemming from her work-related injury.

3. Under the stipulation and agreement of the parties, the parties have stipulated to jurisdiction and venue.

4. Under the agreement of the parties, the applicable average weekly wage is \$1,047.56 with a resulting compensation rate of \$698.41.

5. Under S.C. Code §42-9-301 and Rule 67-1605, the Claimant has requested that a lump sum award be made to the Claimant in lieu of the Claimant's entitlement to payments of compensation being made on a per week basis spread over the Claimant's lifetime as established by the South Carolina Mortality Table, S.C. Code §19-1-150, which payment of weekly compensation benefits, the Commission may order under S.C. Code §42-9-240 and pursuant to James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

ORDER AND AWARD

THEREFORE, IT IS ORDERED that the Claimant is entitled to an Award for total and permanent disability and the Claimant is entitled to the payment of continuing weekly compensation benefits in the amount of \$698.41 and continuing until 500 weeks of compensation have been paid. If any amounts of compensation have accrued that have not been paid as of the date of this Order such accrued compensation benefits shall be paid to the Claimant in a lump sum. Further, the Claimant has requested that the Award of compensation be paid in a lump sum and based on my findings that request is granted and the residual lump sum award shall be calculated by the Commission pursuant to this Award. Further, once the calculation of the residual lump sum payment is determined, a supplemental order will be issued confirming that said lump sum is being paid in lieu of the Claimant's entitlement to weekly compensation payments being made to the Claimant for the remainder of her life. The Claimant was born on October 6, 1954 and at the time of this Award is 62 years of age and has a life expectancy of 22.47 years or 1,171.56 weeks. Her weekly life expectancy shall be used for the calculation of the residual value of weekly compensation payments to the Claimant over her lifetime.

IT IS FURTHER ORDERED that the Claimant having been determined to be totally and permanently disabled and having been

determined to have sustained permanent injury to her cervical spine (back) and her hands which affects her neck and hands, the Claimant is entitled to lifetime medical care for all causally related problems stemming from the injuries sustained as a part of her work-related accident. The Claimant is placed under the care of Dr. R. Joseph Healy, MD her treating neurologist and such other medical providers that he deems just and appropriate to provide all reasonable and necessary treatment and care to affect a cure and provide relief from those causally related medical problems during the Claimant's lifetime pursuant to §42-15-60. That medical care shall specifically include the current medical care as detailed by Dr. Healy to include chronic pain management, massage therapy, physical therapy in addition to all conservative care including all medications and injections. The Claimant's request for benefits for psychological due to her psychological condition at this time as being causally related to work-related injuries is denied.

GROUND FOR REVIEW - DEFENDANTS/1ST APPELLANTS

By way of an Application for Review the Employer/Carrier as 1st Appellants have raised the following grounds for review:

1. Whether Hearing Commissioner erred in finding a fact number 17 in only giving limited weight to Dr. Lembo's opinion with such a finding is against the greater weight of the evidence in the record.
2. Whether Hearing Commissioner erred in finding of fact number 18 in finding an issue with the timeline of Dr. Lembo's designation as the authorized treating physician with such a

finding is against the greater weight of the evidence in the record.

3. Whether Hearing Commissioner erred in finding of fact number 23 in finding that Claimant is permanently and totally disabled, that she cannot qualify for sedentary work, that she cannot return to her job and the tasks of daily living when such a finding is against the greater weight of evidence in the record.
4. Whether Hearing Commissioner erred in finding of fact number 25 that Claimant reached MMI on October 12, 2016 when such a finding is against the greater weight of evidence in the record.
5. Whether Hearing Commissioner erred in finding of fact number 26 in finding that Claimant's cervical spine is causally related to the work accident and giving the greatest weight to Dr. Healy's opinion when such a finding is against the greater weight of evidence in the record.
6. Whether Hearing Commissioner erred in finding of fact number 29 in finding that Claimant is entitled to future medical care and having been found permanently and totally disabled is entitled to lifetime medical care for causally related care for her life when such a finding is against the greater weight of evidence in the record.
7. Whether Hearing Commissioner erred in conclusion of law number 2 in concluding that Claimant is entitled to lifetime medical care for permanent total disability and now having been declared totally and permanently disabled, Claimant is entitled to reasonable and necessary treatment and care during her lifetime when such a conclusion is against the greater weight of evidence in the record.
8. Whether Hearing Commissioner erred in ordering that Claimant is entitled to an award of total and permanent disability when such an order is against the greater weight of the evidence in the record.
9. Whether Hearing Commissioner erred in ordering that Claimant is determined to be totally and permanently disabled and having sustained permanent injury to her cervical spine and her hands that affects her neck and hands and that Claimant is entitled lifetime medical care for causally related problems when such an order is against the greater weight of evidence in the record.

10. Whether Hearing Commissioner erred in ordering that Claimant is placed under the care of Dr. Joseph Healy her treating neurologist when such an order is against the weight of evidence in the record.
11. Whether Hearing Commissioner erred in ordering that Claimant's medical care shall specifically include current medical care is detailed by Dr. Healy including chronic pain management, massage therapy, physical therapy in addition all conservative care getting all medications and injections when such an order is against the greater weight of evidence in the record.

GROUND'S FOR REVIEW - CLAIMANT 2ND APPELLANT

By way of an Application for Review, the Claimant as 2nd Appellant has raised the following grounds for review:

1. That based on the appeal of the Defendants, pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner not otherwise appealed by the Defendants in this matter.
2. That the Hearing Commissioner based on the substantial evidence in the Record erred by failing to award the Claimant psychological care under her treating psychologist and through her treating medical doctors as referenced in the Order. This appeal is as to all Findings of Fact, Conclusions of Law and the Order and Award in reference to that part of the decision.

FULL COMMISSION PANEL REVIEW AND DECISION

Copies of the Grounds for Review of both parties were furnished to all interested parties prior to the oral argument scheduled before the Appellate Panel on August 22, 2017.

Pursuant to SC Code §42-17-50 (1985 as amended), the

Appellate Panel reviewed the Order and Award and considered all the issues raised by the Briefs of both Appellants and Respondents.

After careful review and consideration of this matter, the Full Commission Appellate Panel **AFFIRMS** the Single Commissioner's Order and Award and adopts the Findings of Fact and Conclusions of Law and the Award of the Hearing Commissioner as the Findings of Fact and Conclusions of Law and Award of the Commission:

FULL COMMISSION FINDINGS OF FACT

1. The Claimant suffered an admitted injury by accident arising out of and within the course and scope of her employment.

2. The Defendants have provided some medical care and treatment in this case. Due to the defendants not providing continuing medical care or local medical care after May 14, 2014, the Claimant sought other treatment with Dr. Joseph Healy on her own.

3. The Claimant asserts that she is permanently and totally disabled. She claims that she has problems with both hands and her cervical spine to the degree that she is unable to earn wages. Claimant also asserts, based on the opinion of Dr. Healy, that she is permanently and totally disabled.

4. Defendants contend that the Claimant is not at MMI and base that conclusion on the opinion of Dr. Nancy Lembo who they have designated as the authorized treating physician.

5. They contend that since the Claimant has yet to reach MMI, Claimant is, as of now, entitled only to continuing medical care and treatment as directed by Dr. Lembo.

6. The record is replete with medical records of treatment the Claimant has undergone to include carpal tunnel releases that failed.

7. Claimant sought treatment on her own with Dr. Healy who is a neurologist in Florence. He has treated her for almost two years.

8. Claimant lives in Hartsville.

9. Claimant testified that she is 62 years old and worked as a court reporter for the Employer.

10. Claimant testified that she now could no longer do that job. Her ability to write and to type have been so severely impacted, she can no longer work as a court reporter.

11. Claimant also testified that her ability to perform the tasks of daily living has been severely impacted as well. She testified that she has great difficulty performing any task that requires hand dexterity or grip strength.

12. The Claimant underwent a Functional Capacity Evaluation which was administered by Tracy Hill, PT on November 23, 2015. Ms. Hill wrote of that evaluation, "Mrs. Cartee put forth a consistent effort during the evaluation. She qualifies for less than sedentary work...Mrs. Cartee does not meet the full physical

requirements necessary for sedentary work due to her limited lifting ability and due to her limited sitting tolerance. Sedentary work also requires the ability to use both hands for repetitive hand-finger actions and she does not have this ability."

13. The Claimant has seen Dr. Lembo for evaluation purposes. Dr. Lembo testified that she has seen the Claimant twice.

14. There is much back and forth in Dr. Lembo's deposition about testing that needed to be done and testing that has already been performed.

15. While Dr. Lembo is an eminently qualified physician, it is clear to us from a review of her deposition that she either has not been provided reports of testing already performed or testing has not been performed that she believes will give her information as to the Claimant's current condition.

16. It is also clear to us that there has been frustration on both sides as to testing and treatment.

17. Considering the above, we can only give limited weight to Dr. Lembo's opinion. She has only seen the Claimant twice and she does not have - for whatever reason - testing she believes necessary to formulate an opinion as to the Claimant's current medical condition. Her ability to opine as to whether the Claimant must be viewed in the context of her knowledge of the

Claimant's case.

18. Additionally, we are am troubled by the timeline of Dr. Lembo's designation as the authorized treating physician. She first sees the Claimant on June 11, 2015 and then only sees her again - for the only other time she has seen the Claimant - on February 16, 2016. We are certain both sides could offer arguments as to why that is; but it does not change the fact that Dr. Lembo, who is the authorized treating physician, has seen the Claimant only twice.

19. Dr. Healy, however, has seen and treated the Claimant for almost two years. He is a specialist who is certainly qualified to treat the Claimant. Dr. Healy has provided medical care and treatment and the Claimant testified that she is pleased with the care he has provided.

20. Pursuant to an Interim Order the Hearing Commissioner issued in this case, Dr. Healy saw the Claimant again on October 12, 2016. He wrote of that encounter, "I have previously stated the opinion that her current condition is permanent; and she will need medical care for the foreseeable future and most probably the remainder of her life (to provided symptomatic relief, to allow her to function and to try to maintain her current level of functioning); and that she is totally and permanently disabled from gainful full-time employment. After seeing her and reviewing her current condition, it is my opinion stated to a

reasonable degree of medical certainty that she is at maximum medical improvement. Again, she will require medical care to address her disabling symptoms stemming from this work-related injury and its aftermath.”

21. Subsequent to that opinion, the Defendants took the deposition of Dr. Healy on November 8, 2016. In that deposition, Dr. Healy affirmed his opinion stated above.

22. Dr. Healy has also opined that the Claimant may need physical therapy, massage therapy and pain management in the future to maintain her current level of function.

23. When we view the evidence as a whole and based on a preponderance of the evidence, the Claimant is permanently and totally disabled. She is 62 years old. The Claimant cannot, per the FCE, even qualify for sedentary work. She testified that she cannot return to her job and cannot do work or the tasks of daily living that requires dexterity and grip strength in her hands and fingers.

24. We find the Claimant to be very credible.

25. We find that the Claimant reached MMI on October 12, 2016.

26. Based on the testimony of Dr. Healy, we find that the Claimant’s cervical spine is causally related to this work-related accident. Again, we give the greatest weight to Dr. Healy’s opinion as the treating physician for the past many

months.

27. Given her history with Dr. Healy and his familiarity with her case, Dr. Healy is hereby named the authorized treating physician as to her hands and cervical spine.

28. Based on a review of the evidence, the opinion of Dr. Goldsmith notwithstanding, we cannot find where an authorized psychologist or any treating medical doctor has causally related the claimant's current psychological condition to her work-related accident, and therefore deny her request for benefits for psychological.

Claimant is also entitled to future medical care as set forth above and having been found to be entitled to an Award for total and permanent disability, she is entitled to lifetime medical care for all causally related medical care for the remainder of her life pursuant to the Act.

FULL COMMISSION CONCLUSIONS OF LAW

As provided in S.C. Code §42-17-40, the following Conclusions of Law are made:

1. Under S.C. Code §42-9-10 and §42-1-120, total disability is defined under the Act for loss of earning capacity wherein based on the Claimant's age, education, background, experience and the physical facts of the injury, the jobs which the Claimant can perform are so limited in quality, quantity or dependability that a reasonably stable job market for those do

not exist. Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. Dupont DeNemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996).

2. Under S.C. Code §42-15-60, Claimant is entitled to lifetime medical care under §42-15-60 for total and permanent disability. Having been declared totally and permanently disabled, Ms. Cartee is entitled to all reasonable and necessary treatment and care during her lifetime which will affect a cure and provide relief for all conditions found to be causally related to the compensable injuries stemming from her work-related injury.

3. Under the stipulation and agreement of the parties, the parties have stipulated to jurisdiction and venue.

4. Under the agreement of the parties, the applicable average weekly wage is \$1,047.56 with a resulting compensation rate of \$698.41.

5. Under S.C. Code §42-9-301 and Rule 67-1605, the Claimant has requested that a lump sum award be made to the Claimant in lieu of the Claimant's entitlement to payments of compensation being made on a per week basis spread over the Claimant's lifetime as established by the South Carolina Mortality Table, S.C. Code §19-1-150, which payment of weekly compensation benefits, the Commission may order under S.C. Code

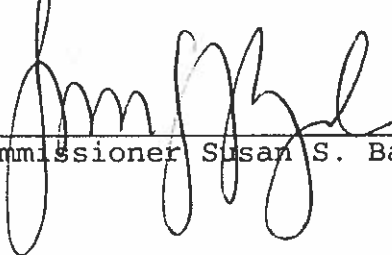
§42-9-240 and pursuant to James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

DECISION AND ORDER OF THE COMMISSION ON APPEAL

THEREFORE, IT IS ORDERED AND FOUND that the Order and Award of the Hearing Commissioner shall be and hereby is **AFFIRMED**.

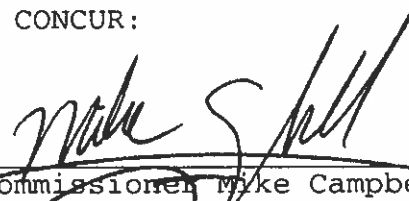
AND IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION

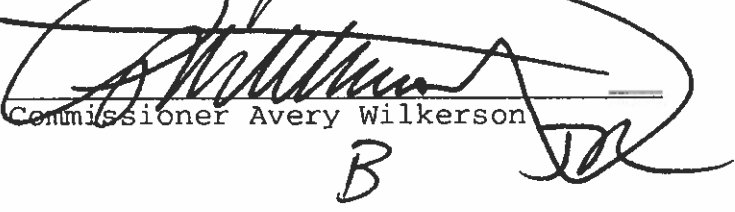



Commissioner Susan S. Barden

I CONCUR:



Commissioner Mike Campbell



Commissioner Avery Wilkerson
B 

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia on October 17, 2017

Exhibit 4

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1307922
Carrier File # 2013-001614
Carrier Code # 500 - SF
Employer FEIN [REDACTED]

Pamela Cartee [REDACTED]

JUDICIAL DEPARTMENT
1015 Sumter Street, Columbia, SC 29201

(843) 339-4003 (home) () - (work)

Preparer's name: Meggan Damiano (803) 896-5893 State Accident Fund, Insurance Carrier

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	230.0000	* Details on Page 2 *		160,634.30
2. Number of weeks T.P.				
3. Number of weeks P.P.	WCC Ordered - P&T 500 weeks commuted			179,077.14
4. Disfigurement				
5. Agreement and Final Release				
Total Compensation Paid				339,711.44
6. Total Medical Benefits* Paid				52,484.06
7. Funeral Benefits				.00

() Case Denied

Date of Injury: 03/01/2013

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

By: Pamela O Cartee
Claimant

By: Lindsay [Signature]
Employer's Representative

Date: 12/11/17

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 \$.00
- B. Attorney's Fee Paid by Employer \$ \$ \$
- C. Attorney's Fee Paid by Claimant (Non contingent fees, only) \$ \$ \$

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

WCC FORM # 19 REV. DATE 3/96 19

STATUS REPORT AND COMPENSATION RECEIPT

[Barcode]

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1307922
Carrier File # 2013-001614
Carrier Code # 500 - SF
Employer FEIN [REDACTED]

Pamela Cartee [REDACTED]
[REDACTED]

JUDICIAL DEPARTMENT
1015 Sumter Street, Columbia, SC 29201

Preparer's name: Meggan Damiano (803) 896-5893

State Accident Fund, Insurance Carrier

TT	2.8571	02-JUL-13	21-JUL-13	1,995.45
TT	227.1428	26-JUL-13	01-DEC-17	158,638.84

007 03

27 27 27

0.038

Exhibit 5

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

December 8, 2017

Deborah Backman, Claims Dept.
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

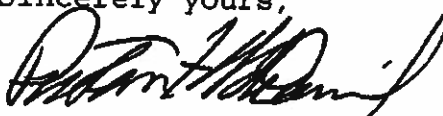
RE: Pamela Cartee v. SC Judicial Department
WCC # 1307922

Dear Debbie:

This is an Awarded case and after Appeal we requested and the State Accident Fund agreed to pay the residual balance and we have disbursed to my client.

Attached is the Form 61, 61A, the itemized Disbursement Statement and the Order approving attorney's fees and costs, along with the required number of copies for approval by Commissioner McCaskill and a self-addressed stamped envelope to return a copy to us. I have also attached a copy of the Award so that this matter may be forwarded to the Commissioner McCaskill for approval. I hope this is sufficient for filing this request for Approval of our Attorney Fees and Costs and I look forward to receiving Notice after Commissioner McCaskill's approval. If anything else is needed please let me know.

Sincerely yours,


Preston McDaniel
Attorney at Law

PFM/smk
Enclosures

cc: John Milling



South Carolina Workers' Compensation Commission
 1612 Marion Street
 Post Office Box 1715
 Columbia, South Carolina 29202-1715
 803-737-5723



WCC # : 1307922
 Carrier File # : _____
 Carrier Code # : _____
 Employer FEIN # : _____

Claimant's Name: Pamela Cartee Employer's Name: SC Judicial Department
 Address: 1825 Woodbine Drive Address: 1015 Sumter Street
 City: Hartsville State: SC Zip: 29550 City: Columbia State: SC Zip: 29201
 Home Phone: () - Work Phone: () - Insurance Carrier: State Accident Fund
 Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Date Attorney Was Hired: 3/26/14 Date of Injury: 5/1/13
 Compensation Rate: _____ Does this conclude the case? Yes No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

A. R.67-1205C does not apply to the facts of this case. A 33 % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:

Date of first impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500.

D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

Preston F. McDaniel
 Attorney for the Claimant

12/8/17
 Date

Summary	
Total Amount of Compensation	<u>\$339,711.47</u>
Attorney's Fee	<u>\$73,094.45 (Final Award)</u>
Costs	<u>Reimbursed from 1st Award</u>
Total Fees and Costs	<u>\$73,094.45</u>
Client Will Receive	<u>\$105,982.69</u>

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Pamela O Cartee
 Client

December 8, 2017
 Date

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

DISBURSEMENT STATEMENT

RE: Pamela Cartee v. SC Judicial Dept.
WCC File No. 1307922

I. Receipts:

Total Compensation Paid: \$339,771.44

Check #_1037482-Commuted Value 12/1/17 \$179,077.14

II. Attorney's fees, costs and disbursements:

Attorney's Fees: Preston F. McDaniel (\$73,094.45)
John Millings

[Fee Based on Award PTD/MMI Date 10/12/16]
[TTD paid from 10/12/16 to]
[12/1/17= Approx 59 weeks x \$698.41/CR=]
[\$41,206.19; Commuted Value(12/1)=]
[\$179,077.14 + \$41,206.19= \$220,283.33]
[Total Value of PTD Award=\$220,283.33]
[Actual Fees =\$73,427.78]
[Requested =\$73,094.45]

Advanced Costs: Preston F. McDaniel:

Previously Reimbursed/Approved from Lump Sum
Of TTD Underpayment (Reimbursed)

III. Net Proceeds to Client after disbursements: \$105,982.69

Reviewed and submitted by:


PRESTON F. MCDANIEL

Client certification and statement:

I hereby certify that I have received a copy of the Statement of Disbursements and that I have reviewed and understand the same. I further understand that any other outstanding costs and non-authorized medical expenses are my sole responsibility.


Pamela Cartee

Dated this 8th day of December, 2017

South Carolina Workers' Compensation Comm. on
1333 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723



WCC #: 1307922
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Pamela Cartee Employer's Name: SC Judicial Department
Address: 1825 Woodbine Drive Address: 1015 Sumter Street
City: Hartsville State: SC Zip: 292550 City: Columbia State: SC Zip: 29201
Home Phone: _____ Work Phone: _____ Insurance Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: 803.771.7211

Please address the following factors in requesting attorney fee approval.

- (A) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly:
We represented Ms. Pam Cartee since before March 2014, when Mr. McDaniel was associated by John Milling to continue representation of Ms. Cartee. This is a contingency fee case and these subsections under the Rules concerning determining a reasonable fee do not apply. However, hundreds of hours have been spent on this case by the attorneys and staffs over the 3 & 3/4 years that we have represented Ms. Cartee. The results indicate the skill necessary to properly set this case up to obtain the benefits now and in the future for Ms. Cartee including the award for total and permanent disability with accompanied lifetime medical benefits for all casually related problems under the highly contested right to such care by local treating physicians.
- (B) The likelihood that the acceptance of this particular employment precluded other employment by the lawyer:
As to Mr. McDaniel this section does not apply as the Claimant's attorney practices almost exclusively in representing injured workers in workers' compensation cases. However Mr. Milling is a trial litigator and this case has interfered with his practice in reference to other litigation for his other clients.
- (C) The fee customarily charged in the locality for similar legal services:
The fee is in accordance with the customary fee charged in the area which is a 1/3 contingency fee plus costs and is subject to the contract entered into between the Claimant and the attorney(s).
- (D) The amount involved and the results obtained:
While this subsection does not apply to contingency fee contracts, see attached Disbursement Statement wherein the claimant's increased the claimant's compensation rate by almost \$300 and then obtained her an award for total and permanent disability with entire compensation value of over \$336,000. The fee request is only based on the value of total and permanent disability at the time that the claimant was determined to be entitled to PTD award and MMI.
- (E) The time limitations imposed by the client or by the circumstances:
Not applicable and no time limits were imposed by either the client or the circumstances.
- (F) The nature and the length of the professional relationship with the client:
We have represented Ms. Cartee as noted above for 3 & 3/4 years.
- (G) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
While this section does not apply since this is a contingency fee contract based on the customary charge in the locality. Mr. McDaniel and Mr. Milling have been practicing law for over 41 years and Mr. McDaniel has more Decisions in the SC Court of Appeals and the SC Supreme Court in the area of workers' compensation than any other single practicing lawyer. Mr. McDaniel is a past President of the SC Trial Lawyers Association and is past Officer and continuing Board Member of the IWA (F/K/A - SC Claimant Lawyer Association). Mr. Milling is a former Circuit Court Judge and trial litigator who has resided over hundreds of trials. Mr. McDaniel and Mr. Milling have represented thousands of people in workers' compensation matters and our reputations in workers' compensation and civil litigation speaks for itself.

(H) Whether the fee is fixed or contingent:

This is a contingency fee of 1/3 plus costs, which is in accordance with the customary charge for representation of an injured worker in workers' compensation matters and is pursuant to the Regulation.

See R.67-1205 and Rule 1.5(a) of the Rules of Professional Conduct, South Carolina Appellate Court Rule 407.

WCC Form # 61A

Revised 10/07

61A

**ATTORNEY FEE PETITION
SUPPLEMENTAL INFORMATION**

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

PAMELA CARTEE,)
)
EMPLOYEE/CLAIMANT)
)
)
)
vs.)
)
)
SOUTH CAROLINA JUDICIAL)
DEPARTMENT)
)
)
and)
)
STATE ACCIDENT FUND)
)
)
CARRIER/DEFENDANT)

**ORDER
APPROVING
ATTORNEY'S FEE
WCC File No.: 1307922**

After review of the record in the above captioned matter and the controlling legal standards for the award of attorney fees and costs in workers' compensation proceedings under S.C. Reg. 1204-1207 and Rule 1.5(a) of the Code of Professional Conduct, I find the attorney's fee of \$73,094.45 and costs of N/A in this matter to be reasonable and hereby approve fees and costs as set forth herein.

AND IT IS SO ORDERED.

Date: _____

COMMISSIONER
SCWCC

Exhibit 6

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

March 2, 2018

VIA EMAIL - klindler@wcc.sc.gov
Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

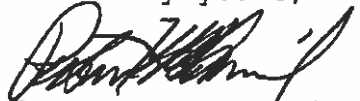
Due to Kelly's mother's death, I forwarded this to Shawnee, because I wanted you to see it as soon as possible. I will try to hand deliver a copy late today of what I will refer to as Revised/Corrected format 61 and Disbursement Statement. Hopefully this revised/restated fee petition will allow you to quickly approve the balance.

As I originally expressed, a new paralegal submitted the original form which I believe caused the question and for that reason I am submitting the Revised format, which Ms. Cartee has no objection to me providing, but which I will be glad to get her to sign if you want me to.

I would ask you to review the revised format and if it explains any concerns you had, please attach it to the original fee petition and return to me as approved, or again I will be glad to get Ms. Cartee to sign it if you prefer.

I am submitting this in hopes of getting this issue resolved and avoiding further litigation. If you would like to speak to me I will be available all day in my office, or at your convenience, on my cell at 606-2107.

Sincerely yours,



Preston F. McDaniel

PFM/rmt

DeBruhl, Shawn

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Friday, March 02, 2018 2:52 PM
To: DeBruhl, Shawn
Subject: Pamela Cartee v SC Judicial Dept
Attachments: SCAN18030214560.pdf

Shawnee:

Attached is letter/email to Commissioner McCaskill, which I would appreciate it if you could get over to him today for his consideration.

Thank you.

Preston McDaniel

South Carolina Workers' Compensation Commission
 1612 Marion Street
 Post Office Box 1715
 Columbia, South Carolina 29202-1715
 803-737-5723



WCC File #: 1307922
 Carrier File #: _____
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: Pamela Cartee Employer's Name: SC Judicial Department
 Address: 1825 Woodbine Drive Address: 1015 Sumter Street
 City: Hartsville State: SC Zip: 29550 City: Columbia State: SC Zip: 29201
 Home Phone: () - - Work Phone: () - - Insurance Carrier: State Accident Fund
 Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Date Attorney Was Hired: 3/26/14 Date of Injury: 5/1/13
 Compensation Rate: _____ Does this conclude the case? Yes No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

A. R.67-1205C does not apply to the facts of this case. A 33 % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:

Date of first impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500.

D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

REVISED/CORRECTED FORMAT
 Attorney for the Claimant

 Date

Summary	
Total Amount of Compensation	Final Award
\$339,711.47	\$220,283.33
Attorney's Fee	\$73,094.45 (Final Award)
Costs	Reimbursed from 1 st Award
Total Fees and Costs	\$73,094.45
Client Will Receive from Final Award	\$147,188.88

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

REVISED/CORRECTED FORMAT
 Client _____ Date _____

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.


Exhibit 7

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

Pamela Cartee,)	
)	
vs.)	
)	
SC Judicial Department,)	Interim Order
)	
Employer,)	
)	
State Accident Fund,)	
)	
Carrier,)	
Defendants)	
<hr style="border: 0.5px solid black;"/>		

A hearing was held in this matter before the undersigned on 02/12/18 to resolve a dispute with a portion of the Attorneys Fees in this case.

To provide for completeness of the record, this Interim Order provides written authorization and approval for disbursement of \$59,632.69 in fees in the above referenced matter. Based on a review of the transcript from the hearing on February 12, 2018, the hearing on February 12, 2018 was to determine whether counsel is entitled to the delta between the amount requested by counsel of \$73,094.45 and the amount already approved \$59,632.69. The request for the amount in question - \$13,461.76 – is under review.



Commissioner Gene McCaskill

Columbia, SC

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
February 21, 2018

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

Exhibit 8

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

February 21, 2018

VIA EMAIL - klindler@wcc.sc.gov
AND US MAIL
Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

IMMEDIATE ATTENTION REQUESTED
PLEASE

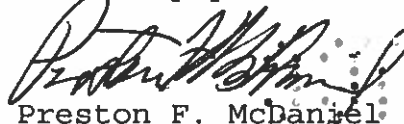
RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

Most respectfully, our fee request is in accordance with Statute, Regulation, Case Law, and Commission practice (Awards/MMI). As you know, I consider this to be a matter of principle and after much deliberation I have decided to take this matter up with the Supreme Court. I hope that I have been respectful during this 2 ½ -3 month ordeal.

I believe this is best for everyone as while I do not know your position, I can only assume that you as the assigned Commissioner have a different interpretation of the law than I do. As I have been since December 5th and at the Hearing I will be available all day to answer any concerns or questions you have. I anticipate ~~of~~ Filing the Writ tomorrow or Friday. As always, I appreciate all of the courtesies and kindnesses shown to me by you, your office and the Commission.

Sincerely yours,


Preston F. McDaniel

PFM/smk

cc: John Milling, Esquire (via email johnmilling@bellsouth.net)

0000

Exhibit 9

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

February 22, 2018

VIA EMAIL - klindler@wcc.sc.gov
AND US MAIL

Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

I am in receipt of the Interim Order and most respectfully, it needs to be amended in that after filing our Fee Petition on December 5th and after repeatedly requesting an opportunity to answer any questions you may have, on January 9th, you advised us that based on your interpretation of the law, we were only entitled to a fee of \$59,632.69. At the hearing, as a lawyer and as an officer of the Court, I handed up to you the Statute, the Regulations and the case law which specifically state and establish that our Fee Petition was in accordance with law. At the hearing, we also went over the date of MMI, the date of the Permanent P+T Award, the uncommuted value received and the residual commuted value. You did not contest the Statute, the Regulations, the case law or any of the figures. Therefore, again, as I have been told and am aware, this dispute is over your interpretation of the law versus mine. Quote your email 9:22 a.m., January 9, 2018: "I have also reviewed the law I believe to be applicable ...". (emp. added). That email was thirty-five days after the request was submitted.

I have refrained from saying this but as a reminder, it is improper for any judicial officer whether that be a Judge or Commissioner or otherwise to confer with anybody else, or to seek legal advice on any matter pending before them without notifying the parties.

You do not have to amend the Interim Order. You can just send me a quick note notifying me that the issue is between your legal interpretation, and I want to reiterate, your legal interpretation of the statute, regulations and rules versus mine.

Commissioner Gene McCaskill

February 22, 2018

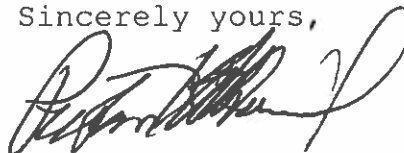
Page 2

So far you have not told me even one difference between your legal interpretation and mine. If you will tell me what it is and allow me to discuss that with you, I will hold off on filing anything.

My practice is almost exclusively limited to workers' compensation; I have no desire to upset you; I personally think the world you; I enjoy appearing before you; I have the utmost respect for you as a lay Commissioner; I think you do an excellent job but this affects my family and my staff and my reputation as a lawyer. I take this as a slander on my name that I am requesting a fee to which I am not entitled. Again, for any client of mine to even think or for it to be inferred to them that I am asking for a fee to which I am not entitled, (I've tried to avoid this), infuriates me. My father told me, "son, you are a poor boy. Go get your education; they can't take away from you. I give you my good name. Do not spoil it." This is a personal affront to me.

If you will have Kellie call me, again, I will be glad to hold off. Otherwise, I will proceed with filing a Writ and of course everything that has been put in writing will be made part of the Record in the Supreme Court.

Sincerely yours,



Preston F. McDaniel

PFM/abh

cc: John Milling, Esquire (via email johnmilling@bellsouth.net)

000000
000000
000000

Exhibit 10

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922


Pamela Cartee,)	
)	
Claimant,)	
vs.)	
)	
SC Judicial Department,)	Order
)	
Employer,)	
)	
State Accident Fund,)	
)	
Carrier,)	
Defendants)	
<hr style="border: 0.5px solid black;"/>		

A hearing was held in this matter before the undersigned on 02/12/18 to resolve a dispute with a portion of the Attorneys Fees in this case.

Findings of Fact and Rulings of Law

1. The question at bar is whether Claimant's Counsel is entitled to additional requested attorney's fees.
2. Determination of this question rests in the plain reading of Regulation 67-1205(c)(2) which reads in part, "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."
3. I cannot find any persuasive authority for an award beyond that amount. I awarded the Claimant permanent and total disability on 04/13/17. While that award was on appeal, the case was not final and, as such, it would be premature to determine an award. Additionally, while on appeal, that Order could have been awarded to a greater award or a lesser award. The Full Commission could have vacated my Order and remanded the case for a hearing de novo. The determination of the award with finality could not be reached until my Order became the law of the case.
4. Once my order was the law of the case, The Defendants then paid the Claimant the commuted value of the award - \$179,077.14. The Form 19 reflects this payment. Based on the payment, Claimant's counsel is entitled to an attorney's fee of 33.3% of that amount which is \$59,632.69. I have previously ordered payment of that amount. I cannot find and counsel has not submitted any authority which supplants Regulation 67-1205(c)(2). As such, the payment of any additional attorney's fees must be consistent with 67-1205(c)(2).

Therefore, the petition for additional attorney's fees is denied.



Commissioner Gene McCaskill

Columbia, SC

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
March 6, 2018

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

Exhibit 11

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

March 7, 2018

VIA EMAIL - klindler@wcc.sc.gov
Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

Sadly, I am in receipt of your Order which states it denied a request for "additional attorney's fees." For the Record, that is wrong. The dispute is over the balance of the original attorney's fees request filed on December 5, 2017. It is my understanding that your written denial, entered three (3) months after the request was filed, is based on your interpretation of the Law. However again for the Record you expressed no disagreement with the Law that I presented to you at the Hearing and I have asked you to put your position on the Record because I wanted to know what your position was since there was no disagreement as to my statement of the Law to you at the Hearing, which you refused to do.

For the Record I have read the Order and it contains several legal positions and legal concepts never referred to by me such as the, "determination of the award with finality could not be reached until my Order became the Law of the Case." Law of the Case is a legal concept.

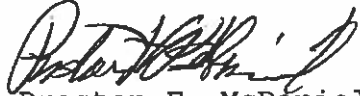
You also state that, "I cannot find any persuasive authority for an Award beyond that amount. I awarded the claimant total and permanent disability on 04/13/17." (emphasis added). That is simply not true. I cited to you persuasive and the uncontradicted opinion of the Supreme Court at the Hearing. You also acknowledge in the Order that you made the "Award" on April 13, 2017.

I look forward to the Declaratory Judgment Action, discovery, and the Appeal and getting this matter corrected.

Commissioner Gene McCaskill
March 7, 2018
Page 2

Finally, please note I have a co-counsel, and a copy of this Decision must be served on Mr. Milling.

Sincerely yours,



Preston F. McDaniel

PFM/smk
Cc: John Milling

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

March 13, 2018

VIA EMAIL ONLY: abracy@wcc.sc.gov
Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Cartee v. SC Judicial Department
WCC File No. 1307922

Dear Amy:

For the first time in 42 years of practicing law I've had a Commissioner not approve a portion of our attorney's fees requested. I have until March 20th to file an appeal if that applies in this situation and I am seeking the advice of the Commission on how to proceed. I am sending a copy of this to Keith Roberts and would appreciate it if one of you could get back to me on how to proceed.

Under S.C. Code §42-15-90 I may seek approval by the Commission or by any Court of competent jurisdiction of any fee charged in a Worker's Compensation case. There is no referral in the Statute to Appeal.

Section 42-17-50 of course, allows for an Appeal from an "Award" of the Commission but 67-701 makes it clear that I have to serve the opposing party with the Form 30 to be accepted by the Commission and there is no opposing party unless it would be my client; who wants us paid. So who is served?

Next, Rule 67-1204 and 1205 say nothing about an Appeal.

In this case we submitted our request for approval of attorney's fees on December 5th and although subsection "F" requires that if the Commissioner has any question about the request the Commissioner, "shall immediately schedule a Hearing to consider argument of counsel and testimony, if any." That did not happen. Under Subsection "E" the Hearing Commissioner could have Amended the Order, signed and returned it and if we disagreed with the Amended Order we could "file a Motion" with the Judicial Dept. That did not happen either in this case.

In January, over a month later, after making numerous requests on the status, I wrote Commissioner McCaskill and only then he set a Hearing for February at which I presented argument, but he would not allow me to be sworn. Then a month after that Hearing, I received an Order by email.

Amy Bracy, Judicial Director
March 13, 2018
Page 2

My question in reference to that Order is, is this the Order that is referred to under Subsection "E" of 1204, so can I file a Motion with the Judicial Dept. to get, for a better term, reconsideration. Again, according to my reading of 67-1203, 1204, 1205, 1206, 1207, I do not see where there is any provision for an Appeal.

So do I file a Motion for a Hearing or should I file an Appeal.

For safety's sake, unless I hear from you, I am going to draft a Form 30 Appeal and serve it on my client, who by the way again wants my fee and that of my co-counsel, Judge Milling paid. I will go ahead and file that Appeal if I haven't heard from you by the 20th. I would ask you to hold the check til I can get an answer from y'all as to whether or not I should appeal now and I will hold off on filing a Motion until I hear back from you in that regard.

I am probably going to proceed with requesting a hearing before the Administrative Law Court which I believe has jurisdiction over this issue as well. Also, I am going to draft/file some type of Declaratory Judgment action in Circuit Court to obtain discovery and to have a Judicial determination made as to whether our fee requested is in accordance with statute, regulation and case law.

Again I am sorry to submit this to you or cause any expenditure on behalf of the Commission, but I am trying to proceed according to Law to get this issue resolved. This is a matter of principle to me and I truly do not understand Commissioner McCaskill's (a lay Commissioner) interpretation of the statute, regulations and caselaw. I appreciate your assistance and I look forward to hearing from you and/or Keith.

Sincerely yours,



Preston F. McDaniel

PFM/smk

cc: John Milling, Esq. (Via Email johnmilling@bellsouth.net)
Keith Roberts (Via email-keroberts@wcc.sc.gov)
Pam Cartee (Via email)

Roberts, Keith

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Thursday, March 15, 2018 4:49 PM
To: Bracy, Amy
Cc: Roberts, Keith; 'John Milling'; 'Pamela Cartee'; preston@pfmcdlaw.com
Subject: RE: Cartee File No 1307922

Amy,

Thank you for your email, but the reason I sent it to Keith Roberts also is I would request an opinion from the General Counsel for the Commission. The defendants are not a, "party" to my fee contract with my client which is the subject of this dispute at the Commission. There is no question that this situation involves issues of client confidentiality and interference with contract. Further, this is a very sticky situation in that we have a non-lawyer Commissioner refusing to approve our attorney's fees based on his legal interpretation of the law. In my opinion on December 5th if he disagreed with the law and fee requested, he should have immediately notified Judge Milling and I of the question, notified us that he was seeking a legal opinion from Keith in accordance with ethics requirements and then we could have proceeded accordingly. For those reasons, I would specifically ask Keith to send me a letter, if I am directed to serve the defendants, notifying me that that is in accordance with the statutes/regulations and the S.C. Rules of Professional Conduct, Rule 1.6 and 1.5. If in the legal opinion of the Commission I am required to serve the defendants, I will be glad to do so.

Finally, to help resolve this issue I believe the proper caption of this matter for, which would resolve the service issue should be:

Preston F. McDaniel and John Milling, Attorneys at Law

v.

SCWCC

In re: Pam Cartee v. the SC Judicial Dept and the State Accident Fund .
Disputed Fee Request

If Keith agrees that would resolve this immediate issue.

I look forward to Keith's reply. I am just trying to make sure that we don't get anyone in trouble and we do not violation any contract or ethics rights in the process. Again, thanks for your prompt reply. By copy of this email, I am sending a copy to my co-counsel and client.

-Preston

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211

Fax : (803) 252-0709

Please "Reply to All" when responding

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

From: Bracy, Amy [mailto:abracy@wcc.sc.gov]
Sent: Thursday, March 15, 2018 11:14 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Cc: Roberts, Keith <keroberts@wcc.sc.gov>; John Milling <johnmilling@bellsouth.net>; 'Pamela Cartee' <pocartee@gmail.com>
Subject: RE: Cartee File No 1307922

Mr. McDaniel;

If you file a WCC Form 30 appealing an award of attorneys' fees, the Commission will set the matter for a Hearing in accordance with Section 42-17-50. All parties of record, and the Claimant individually, should be served with any appellate documents.

Sincerely,

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
1333 Main Street
Columbia, SC 29201
803-737-5672

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Tuesday, March 13, 2018 5:06 PM
To: Bracy, Amy <abracy@wcc.sc.gov>
Cc: Roberts, Keith <keroberts@wcc.sc.gov>; John Milling <johnmilling@bellsouth.net>; 'Pamela Cartee' <pocartee@gmail.com>
Subject: Cartee File No 1307922

Amy:

Please see attached letter from Preston. We look forward to hearing from you and/or Keith soon. Thanks

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave

Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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Roberts, Keith

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Friday, March 23, 2018 12:21 PM
To: Roberts, Keith
Subject: Pam Cartee WCC 1307922 - Fee Dispute

See below from Preston:

Dear Keith:

I plan on filing a Declaratory Judgment action in Darlington County the first of next week concerning the refusal to award a portion of our attorney's fees requested in December 2017, and denied March 8th based on Commissioner McCaskill's "legal opinion". Would you please let me know whether or not the Commission will accept service on the DJ action to avoid the service fee expense once filed?

Keith I would also appreciate a written reply concerning the ethics issue in reference to the Regulation (not Statute) requirement that a Form 30 be served on the parties since this is an Appeal of a Disputed Attorneys Fee issue which is an issue between my client and me subject only to the statutory requirement of the Commission's authority to approve my attorney's fee. I believe the Regulation if we interpret it require requires service on the defendants in an Appeal over an Attorney's Fee Dispute places any lawyer in an ethical bind. As an alternative to your opinion, I would appreciate a call to discuss possibly obtaining an ethics opinion from one of the ethics professors to help all of us.

Sorry to put all of us through this but this is the first time in 42 years I have ever had my fee request questioned.

I look forward to hearing from you.

-Preston

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

Please "Reply to All" when responding

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Exhibit 12

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

PRESTON F. MCDANIEL, ESQUIRE)
AND)
JOHN MILLING, ESQUIRE)

Plaintiff(s))

vs.)

SOUTH CAROLINA WORKERS' COMPENSATION)
COMMISSION)

Defendant(s))

Submitted By: Preston F. McDaniel
Address: 1315 Elmwood Ave
Columbia, SC29201

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET ✓

18CP160334

SC Bar #: 3770
Telephone #: 803-771-7211
Fax #: 803-252-0709
Other:
E-mail: preston@pfmedlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rule
- This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rule
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 ____-NI-____- <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Libel (380) <input type="checkbox"/> Other (399) _____ | <p>Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim for Delivery (400) <input type="checkbox"/> Condominium (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) _____ | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstat Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture - Consent Order (850) <input type="checkbox"/> Other (899) _____ | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Incapacitated Adult Settlement (790) <input checked="" type="checkbox"/> Other (799) <u>D.J./TRO</u> | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) _____ |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Interpleader (690) | | | |

2018 APR 17 AM 9:05
 SCOTTSBORO
 CLERK OF COURT
 DARLINGTON COUNTY
 FILED

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
 DARLINGTON COUNTY)
)
 PRESTON F. MCDANIEL, ESQUIRE)
 AND)
 JOHN MILLING, EQSUIRE)
)
 Plaintiff,)
)
 vs.)
)
 SOUTH CAROLINA WORKERS')
 COMPENSATION COMMISSION)
)
 Defendant.)

IN THE CIRCUIT COURT FOR THE
 FOURTH JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
 FROM ADR

DOCKET NO.

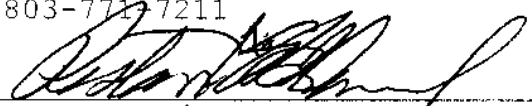
18CP160334

I certify that this action is exempt from ADR because:

- this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- this action is appellate in nature;
- this is a post-conviction relief matter;
- this is a contempt of court proceeding;
- this is forfeiture proceeding brought by the State;
- this is a case involving a mortgage foreclosure; or
- the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

FILED
 2018 APR 17 AM 9:45
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Preston F. McDaniel, Esquire
 McDANIEL LAW FIRM
 1315 Elmwood Avenue
 Columbia, SC 29201
 803-771-7211



 Plaintiff/Attorney for
 Plaintiff

 Defendant/Attorney(s) for
 Defendant(s)

Date: April 12, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) FOR THE FOURTH JUDICIAL CIRCUIT
)

PRESTON F. MCDANIEL, ESQUIRE,)
AND)
JOHN MILLING, ESQUIRE)
Plaintiff,)
v.)
SOUTH CAROLINA WORKERS')
COMPENSATION COMMISSION)
Defendant.)

C/A N **18CP160334**

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.:1307922

SUMMONS

PAMELA CARTEE,
Employee-Claimant,
v.
SOUTH CAROLINA JUDICIAL DEPT.,
Employer, and
STATE ACCIDENT FUND,
As Carrier,
Defendants

2018 APR 17 AM 9:45
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

TO: THE DEFENDANT ABOVE NAMED: South Carolina Workers'
Compensation Commission, 1333 Main Street, Ste 300, Columbia, SC
29202.

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served
upon you, and to serve a copy of your Answer to the Complaint on

the Plaintiff, Preston F. McDaniel, at his office, McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted,



Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

And

John M. Milling
MILLING LAW OFFICE
88 Public Square
Darlington, SC 29532
(843) 393-4083
Plaintiffs

April 12, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

PRESTON F. McDANIEL, ESQUIRE)
AND)
JOHN MILLING, ESQUIRE,)

C/A No.

18CP160334

Plaintiffs,)

v.)

SOUTH CAROLINA WORKERS')
COMPENSATION COMMISSION,)

Defendant.)

IN RE:)

South Carolina Workers)
Compensation Commission)
WCC File No.: 1307922)

COMPLAINT

PAMELA CARTEE,)

Employee-Claimant,)

v.)

SOUTH CAROLINA JUDICIAL DEPT.,)

Employer, and)

STATE ACCIDENT FUND,)

As Carrier,)

Defendants.)

2018 APR 17 AM 9:45
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

The Plaintiffs, Preston F. McDaniel, Esquire and John Milling, Esquire, would respectfully show unto the Court as follows:

I. INTRODUCTION

1. That this action is filed by the Plaintiffs under the South Carolina Declaratory Judgment Statute, S.C. Code §15-53-10, 20, 30, et seq. praying for a declaration of their rights under the provisions of S.C. Code §42-15-90 and the Commission Regulations adopted, arguendo, in accordance with S.C. Code §42-3-185 and under the cases decided by the South Carolina Supreme Court in reference to the date upon which an award of the Commission is permanent as to their entitlement under the Statutes, Regulations and decisions of South Carolina Appellate Courts to the entire fee as requested and submitted to the Commission for approval on December 5, 2017 as being in accordance with law; and declaring that the Order which was not rendered by the Commission until March 8, 2018, wherein the fee petition was only partially awarded, is contrary to the provisions of the Statutes, Regulations, case law and the requirements thereof.

II. PARTIES

2. That the Plaintiff, Preston F. McDaniel, is a resident of Richland County and the Plaintiff, John M. Milling is a residence of Darlington County.

3. The South Carolina Workers Compensation Commission is an agency of the State of South Carolina and is responsible for administering the South Carolina Workers Compensation Act with its main office being in Columbia, SC and which has statewide jurisdiction for the administration of all claims under the South Carolina Workers Compensation Act, S.C. Code §42-1-10 et. seq. including Darlington County wherein and from which county the matter of *Pamela Cartee v. The South Carolina Judicial Department* and the South Carolina State Accident Fund arose and was filed as WCC File No 1307922.

III. JURISDICTION AND VENUE

4. That this Court has jurisdiction over this declaratory judgment action as the Court of general jurisdiction for the State of South Carolina and specifically under the provisions of the Declaratory Judgment Act under South Carolina Code §15-53-10 et. seq., under which this action is brought. Venue is proper in that the fee and representation contract between Ms. Cartee and Plaintiffs was entered into and the disputed fee and the declaration of rights under the Statutes, Regulations and the controlling authority of the Commission over attorneys' fees arises out of a workers' compensation action arising out of the County of Darlington, that being *Pamela Cartee v. The South*

Carolina Judicial Dept. and The South Carolina State Accident Fund.

IV. DECLARATORY JUDGMENT ACTION LAW AND RELIEF SOUGHT

5. That in the matter of Pamela Cartee, Employee/Claimant v. the South Carolina Judicial Dept., Employer and the State Accident Fund, Carrier, WCC File No. 1307922, Commissioner Gene McCaskill filed an Award on April 17, 2017 finding the Ms. Cartee had reached maximum medical improvement (MMI) on October 12, 2016 and award making a compensation to her as of that date for total and permanent disability entitling her to:

"the payment of continuing weekly compensation benefits in the amount of \$698.41 and continuing until 500-weeks of compensation have been paid."

A copy of the Award is attached hereto and incorporated herein by reference as Exhibit A.

6. That, if contested, as will be set forth in the evidence presented to the Court in support of this Declaratory Judgment Action and relief sought, that the, "**Award**" was appealed based on a Request for Review filed by the Defendants on April 26, 2017 by the filing of a SC WCC Form 30 and attaching to that Form 30 the alleged issues of law and fact that the defendants wanted considered. Attached hereto and incorporated herein by reference as Exhibit "B".

7. That subsequent thereto the Full Commission issued its Award affirming the decision of Commissioner McCaskill which was

filed on October 17, 2017. A copy of that decision is attached hereto and incorporated herein as Exhibit "C".

8. That subsequent thereto, the decision of the South Carolina Workers Compensation Commission affirming the, "Award" was not appealed and subsequent to the 30-day appeal provision running, the claimant made a request for the payment of the residual value of the, "Award" in a lump sum pursuant to the provisions of South Carolina Workers Compensation Act.

Calculation of the residual value of the Award was made by the Defendants and is attached hereto and incorporated herein by reference as Exhibit D.

9. That on December 5, 2017, the Plaintiff, Claimant's counsel pursuant to Statute, Regulations and case law filed a Fee Petition requesting the approval of attorney's fees along with an itemized statement of costs and WCC Form 61, all of which are attached hereto and incorporated herein by reference as Exhibit "E".

10. That subsequent thereto and the Fee Petition having not been "immediately" approved, amended and/or a hearing noticed as required by Regulation, the Plaintiff contacted the Commission continuously between December 8, 2017 and January 9, 2018, via email, letter, and by personal appearance at the Commission (x3) in an effort to determine why the Petition had not been approved as will be set forth in the evidence, if not agreed to in the

responsive pleadings filed by the Commission as the Defendant in this matter.

11. That finally over a month later, on January 9th an email was received from the lay Commissioner noting that the Commissioner was approving a portion of the fees requested but that based on his, "legal opinion" ("I have also reviewed the law I believe applicable") he was not approving a portion of the attorney's fees in the amount of \$13,461.76.

12. That prior to the email of January 9th and subsequent thereto the plaintiffs notified Commissioner McCaskill that the statutes and regulations require that a Commissioner either immediately approve or, "shall immediately" set a hearing on the fee petition [W.C.C. Reg. 67-1204(F)] as submitted to the Commission for approval. In this case, the fee petition was submitted on December 8, 2017 and only after the plaintiffs, after noting to the Commissioner that the Commissioner had not complied with the statute and regulations and that it had been over a month, requested that a hearing be set in this matter.

13. That subsequent thereto on January 17, 2018, a hearing was set for February 12, 2018. Contrary to the Code of Ethics, Statutes and Regulations, counsel for the Employer and Insurance Carrier was served with notice of the hearing who waived appearance as not being involved. At the hearing, documents were put into evidence confirming all of the emails, letters and

attempts made at having a discussion with the Commissioner to determine what, if any, problems there were with the fee petition as submitted. At the hearing, the Commissioner at that point was presented in written form with the statutory authority, the regulations and the case law supporting that the Fee Petition as submitted was in accordance with law to which no objection or contrary position was taken by the Commissioner. However, the Commissioner did not rule and took the matter under advisement.

14. That subsequent thereto, having heard nothing and the decision to not approve the Fee Petition as submitted, according to the understanding of the Plaintiffs being that the hearing Commissioner, a lay Commissioner, without legal training was of the, "legal opinion" that the fees was not in accordance with law under the statute, regulations, and case law, the Plaintiffs asked the Commissioner to open the Record and to place his position on the Record; which the Commissioner refused to do.

15. That subsequent thereto, on March 8th, the plaintiffs received an Order from Commissioner Gene McCaskill, the assigned Commissioner for review and approval of the attorneys' fee petition and the portion of the fee in contest, denying the balance of the Fee Request. Further, upon information and belief, based upon a review of that Order and the basis for a denial of the balance of the fees requested being based on legal opinion/interpretation and knowing the Commissioner is a lay

Commissioner not trained in the law and analysis, the Plaintiffs verifiably believe that these facts establish that the Commissioner without notice to the Plaintiffs may have sought outside legal advice in violation of the Judicial Code of Ethics.

16. That S.C. Code of Law §15-53-20 provides that this Court has the power to declare the rights of the Plaintiffs under their contract and under the statutes applicable to the approval of their fee request as submitted to the South Carolina Workers' Compensation Commission. Under §15-53-30, any person interested or who has a property interest in any written contract or, "whose rights, ... are affected by a statute, ... contract ..., may have determined any question of construction or validity arising under the ..., statute, ... and obtain a declaration of rights, ... thereunder."

17. That normally under law, a fee contract between an attorney and his client is a matter of contract law subject only to the Code of Professional Responsibility, however, in a workers' compensation action, S.C. Code §42-15-90(A), attorneys fees, physician fees and hospital charges for services under this title are subject to the approval of the commission and subsection (B)(1) provides that a person may not receive a fee or consideration for a service rendered pursuant to the title unless the fee, ... is approved by the Commission or a court of competent jurisdiction ...". S.C. Code §42-3-30 provides the

authority of the Commission to promulgate regulations relating to the administration of the workers' compensation laws necessary to implement the provisions of the title but also that those regulations must be, "consistent therewith". Further, S.C. Code §42-3-185 provides specific and special requirements in reference to policies and procedures and regulations established for implementing the provisions of §42-15-90 which specifically provides that any such policies or procedures shall only become effective when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act and which,

"proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent resolution of the General Assembly."

18. That pursuant to the authority of the Commission to implement regulations, and presumably in accordance with S.C. Code §42-3-185, the Commission has adopted regulations in reference to the approval of attorneys fees. Regulation 67-1204(A) provides that all attorneys shall report and obtain approval of any fee for services in accordance with the regulations in reference to a workers' compensation claim. Subsection (D), provides that the attorney is to file a Form 61 and a proposed order and the order may be signed and returned to the attorney(s) when the calculation of the fee is in accordance

with 67-1205. Under subsection (D), the Commissioner has the option to amend, sign and return the order and the attorney(s), if (s)he disagree(s) with the amended order, may file a motion with the Judicial Department and the motion may be heard according to Rule 67-215 unless the motion requests a hearing to present testimony or evidence.

Most importantly to this declaratory judgment action subsection (F) provides that if the Form 61 and order do not comply with Rule 67-1205, the:

"Commissioner reviewing in the Form 61 and order shall immediately schedule a hearing to consider argument of counsel and testimony, if any."

Further, Regulation 67-1205 provides for a contingency fee in general of 33.3% and provides for determining a reasonable fee in certain situations. Subsection (C)(3), provides that the attorney may request a fee from past due compensation but thereafter during the payment of temporary compensation, the attorney may not charge a fee from such temporary compensation.

The Regulation then specifically provides that:

"If the attorney secured the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."

19. That in interpreting when temporary compensation benefits transition to an award of permanent compensation benefits, then Judge Hearn, now Justice Hearn wrote in Hendricks

v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999), and held that, "essentially workers' compensation benefits accrue along a time continuum: TTD (Temporary Total Disability) benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member".

Justice Hearn cited to and for the same proposition the cases of Smith v. South Carolina Department of Mental Health, 329 S.C. 485, 495, 494, S.C.2d 630, 635 (S.C. App. 1997) and O'Bannon v. Westinghouse, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (S.C. App. 1995).

20. That in accordance with the statutes, regulations and case law, the Fee Petition submitted on December 8th, set forth the date that the hearing Commissioner had determined that the Claimant reached maximum medical improvement at which time the award of the Commission became a permanent award and the entitlement to the fee of the attorneys of one-third (1/3) attached and was based on the value of the total and permanent disability "award" made as of that date; which is in accordance with the statute, the regulations of the Commission and the case law as set forth hereinabove. The hearing Commissioner a lay Commissioner, whose decision must be based upon his review as the Judicial Officer hearing the case under Judicial Cannons

applicable to the Commission (§42-3-250) only, unless parties are advised otherwise, over three months after the Fee Petition was submitted, in violation of the statutes and regulations as set forth hereinabove, stated the, "legal" opinion and awarded a fee based only on the value of the award as of the date that it was affirmed by the Full Commission and the Defendants stopped further appeal over two (2) years after the permanent award was made. As argued to the Commissioner in repeated letters and emails and verbally to the Commissioner, under that reasoning which is contrary to statute, regulation and case law, an attorney representing the Claimant, if the Defendants decide to appeal the permanent disability "award" made by the Commission all the way to the Supreme Court and that award is ultimately approved when the Defendants decide to stop appealing, the Claimant's attorney would only be entitled to an award of attorney fees as of that date. This Court may take judicial notice in reviewing this situation that where a case is appealed all the way to the Supreme Court, that that process may take five or six years or more for a final decision to be rendered.

21. That under the South Carolina Workers' Compensation Act, there is actually no statutory provisions specifically addressing the rights of an attorney where the fee is not approved in reference to an appeal or how the matter is to be reviewed. S.C. Code §42-15-90 simply provides that not only may the Commission

approve an attorneys fee request but that any Court of, "competent jurisdiction" may approve an attorneys fee request and this Court is the Court of general jurisdiction. In addition, in reference to whether or not the attorney has a right to appeal a decision made, there is no section of the Act that addresses that. S.C. Code §42-17-50 only provides for an application for review of an "award" by the Commission and provides for review by the Full Commission of that award. In fact, the Regulations in reference to appeals, Rule 67-701, provides that the party appealing is to serve the opposing party under Rule 67-211 and Rule 211 only refers to the service of a Claimant or the Employer's representative. In this case and in any fee dispute over approval by the Commission, the opposing party to the attorney's request is the Commission and the only additional party in interest would be the attorney's client, the injured worker. In this case, the hearing notice was served inappropriately on the Defendants and after request about service of an appeal, the Commission gave no guidance as to whether or not the Defendants were to be served. Plaintiffs would submit their involvement would be and is actually an interference with a contract between the Claimant and the Claimant's attorney(s) and the responsibility of the Commission to review and approve the attorneys Fee Petition. The Defendants are not actually a party to either the contract or the request for approval of attorney

fees or a party to the appeal of the denial of any of the attorneys fees requested. The Workers' Compensation Act being in derogation of the common law is to be strictly construed and there are simply no provisions setting forth or establishing whether or not a fee may be appealed or what action is to be taken other than requesting a legal determination which is being made in this declaratory judgment action. Wherefore, the Court should speak and rule upon the parties to, and what procedures should be followed in reference to contesting the refusal to approve fees as submitted to the Commission for approval.

22. That the decision in this matter is a matter of law for decision by the Courts interpreting the statute, regulations and case law as applied to this factual situation.

WHEREFORE, the Plaintiffs would respectfully request and pray for the following relief:

1. Issuing a Temporary Restraining Order restraining the Workers' Compensation Commission a quasi-judicial body from taking any further action in this matter pending a determination by this Court as to the law applicable to and determining the Plaintiffs' right under the Statutes, Regulations and case law in this situation.

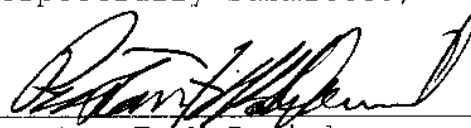
2. Issuing a legal opinion and determination under a review of the statutes, regulations and case law as applied to the final permanent "award" made by the hearing Commissioner in this

matter; declaring that the fee as requested is in accordance with the statutes, regulations and case law applicable to a final permanent "Award" which in this case set forth a date of maximum medical improvement, awarded total and permanent disability and an entitlement to the residual value of compensation benefits for a total and permanent disability award as of that date under a 500-week award.

3. Finding based upon a review of the statutes, regulations and case law that the Commissioner assigned to review the Plaintiffs' Fee Petition committed an error of law and violated the Regulations by failing to immediately approve or set a hearing on the attorney Fee Petition as submitted to the Commission for approval on December 8, 2017.

4. For the costs of this action and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

And

John M. Milling
MILLING LAW OFFICE
88 Public Square
Darlington, SC 29532
(843) 393-4083
Plaintiffs

4/12, 2018

Exhibit 13

gjs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON) C/A No. **18CP16-0334**

PRESTON F. MCDANIEL, ESQUIRE)
AND)
JOHN M. MILLING, ESQUIRE)
)
Plaintiffs)
)
v.)
)
SOUTH CAROLINA WORKERS')
COMPENSATION COMMISSION)
)
Defendant.)

**TEMPORARY RESTRAINING
ORDER ISSUED WITHOUT NOTICE
PURSUANT TO SCRCP RULE 65 (B)**

IN RE:

South Carolina Workers,
Compensation Commission
WCC File No.: 1307922

PAMELA CARTEE,
Employee-Claimant

v.

SOUTH CAROLINA JUDICIAL DEPT,
Employer, and
STATE ACCIDENT FUND,
AS Carrier,
Defendants.

2018 APR 17 AM 10:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

This Court having reviewed the Affidavit and the verified Complaint and having found that the Declaratory Judgment sets forth a request a determination by this Court under the

Declaratory Judgment Action as to the legal rights of the parties under Statute, Regulation and Caselaw determining whether the fee request as filed by the plaintiffs was as a matter of law in accordance with Statutes, Regulations, and case law; and finding that the Commission is quasi-judicial administrative body made up of lay and attorney Commissioners; and finding that this matter is a matter of legal interpretation and legal opinion as to the interpretation of the Statutes, Regulations and case law; and finding that an Appeal having been filed, to ensure the exhaustion of Administrative remedies, with the Commission which is set for May 24, 2018, Wherefore,

After due and proper consideration of the verified Complaint and the Affidavit attached thereto and incorporated therein by reference, and after a preliminary determination that the decision as to whether or not the fee petition as filed with the Workers Compensation Commission is a matter of legal interpretation of the applicable Statutes, Regulations and Caselaw through the petition and is thus a matter of law for decision by the Court, it is a determination of this Court that a Temporary Restraining Order without Notice is proper pending a hearing for a determination as to whether or not the Temporary Restraining Order will be issued,

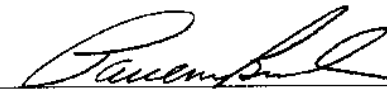
IT IS HEREBY ORDERED that the request for a Temporary Restraining Order Without Notice be and hereby is **GRANTED** and that the South Carolina Workers' Compensation Commission by and through

its Attorney(s) are hereby ordered and restrained from taking further action on the Appeal filed with the South Carolina Workers' Compensation Commission until such time as a hearing may be held on the Motion Requesting a Temporary Restraining Order pursuant to the motion filed with the Court.

Pursuant to the provisions of Rule 65(b) this Order shall expire ten (10) days from the date and time of issuance. This Order is issued on April 17, 2018 (date) at (hour) 10:00, a. m. o'clock. Upon notice for good cause shown, which shall be include the fact that a hearing cannot be held on the Motion for a Temporary Restraining Order, this Court will entertain an extension for a like period of time unless the Defendant South Carolina Workers' Compensation Commission, the Defendant in this action, agrees to that this Temporary Restraining Order shall remain in place until such time as a hearing can be held on the Motion for a Restraining Order.

AND IT IS SO ORDERED.

Under the allegations contained herein, no bond is required.


PRESIDING JUDGE
Fourth Judicial Circuit

April 17th, 2018
at 10:00 AM

2018 APR 17 AM 10:30
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

Exhibit 14

DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1307922

Pamela O. Cartee,

Claimant,

v.

S.C. Judicial Department,

Employer,

&

State Accident Fund

Carrier,

Hearing held in Richland County,
South Carolina on May 21st, 2018.

Appearances: Mr. Preston F. McDaniel, on his own behalf.
No appearance was made by the Claimant.
No appearance was made by Defendants.

Purpose of Hearing: To resolve the dispute of Attorney Fees and Costs.

Filed:

May 30, 2018

STATEMENT OF THE CASE

This matter comes before the Workers' Compensation Commission on appeal from a Decision and Order of the single Commissioner dated March 6th, 2018, denying the Petition for Additional Attorneys' Fees requested by Claimant's attorney, Preston McDaniel ("Counsel") on his Form 61. The purpose of this Hearing is to determine an appropriate award of attorneys' fees. The merits of the underlying claim were decided by Decision and Order of the Appellate Panel dated October 17th, 2017.

ORDER OF THE SINGLE COMMISSIONER

On March 6th, 2018, the single Commissioner made the following Findings of Fact and Rulings of Law:

1. The question at bar is whether Claimant's Counsel is entitled to additional requested attorney's fees.
2. Determination of this question rests in the plain reading of Regulation 67-1205(c)(2) which reads in part, "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."
3. I cannot find any persuasive authority for an award beyond that amount. I awarded the Claimant permanent and total disability on 04/13/17. While that award was on appeal, the case was not final and, as such, it would be premature to determine an award. Additionally, while on appeal, that Order could have been awarded to a greater award or a lesser award. The Full Commission could have vacated my Order and remanded the case for a hearing de novo. The determination of the award with finality could not be reached until my Order became the law of the case.
4. Once my order was the law of the case, The Defendants then paid the Claimant the commuted value of the award - \$179,077.14. The Form 19 reflects this payment. Based on the payment, Claimant's counsel is entitled to an attorney's fee of 33.3% of that amount which is \$59,632.69. I have previously ordered payment of that amount. I cannot find and counsel has not submitted any authority which supplants Regulation 67-1205(c)(2). As such, the payment of any additional attorney's fees must be consistent with 67-1205(c)(2).

Therefore, the petition for additional attorney's fees is denied.

DECISION OF THE COMMISSION

Based on our review of the record and consideration of the position of Counsel, we make the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. Counsel first secured compensation payable to the Claimant in the form of a lump sum payment of back-owed Temporary Total Disability by Order dated July 28th, 2016. Counsel secured the payment of compensation in the amount of \$29,600.93. On September 12th, 2016, the Commission awarded contingency attorneys' fees to Counsel in the amount of \$9,866.98, to be withheld from the amount awarded to Claimant in accordance with Reg. 67-1205(C)(2).
2. Counsel continued to represent Claimant. On April 17th, 2017 the single Commissioner awarded Claimant permanent and total disability benefits under § 42-9-10 and lifetime medical care under § 42-15-60. Defendants appealed the award to the Commission. While on appeal, Claimant remained on a running award of weekly total disability benefits. On October 17th, 2017, the Appellate Panel fully affirmed the award of the single Commissioner. Defendants did not seek an appeal of the award in accordance with § 42-17-60, and the award of the Full Commission became the law of the case on or about November 16th, 2017.
3. On or about December 13th, 2017, Defendants filed a WCC Form 19 with the Commission, showing that it had paid the award to Claimant in a lump sum in the amount of \$179,077.14. The Form 19 showed that Claimant had received 230 weeks of total disability benefits, paid weekly, that terminated on December 1st, 2017. The \$179,077.14 payment represented the commuted value, calculated in accordance with Reg. 67-1605, of the remaining weeks of total disability under § 42-9-10 that were due and payable at the time the award of the Full Commission became final.
4. On December 8th, 2017, Counsel filed a Form 61 attorney fee petition, asking for the Commission to award him a second contingency fee in the amount of \$73,094.45. According to the disbursement statement provided by Counsel, this amount was to be

withheld from the \$179,077.14 awarded to Claimant, purportedly pursuant to Reg. 67-1205(C)(2). \$73,094.45 represents 40.82% of \$179,077.14. Counsel asserts he is entitled to an award of attorneys' fees of 33.3% of all benefits paid to Claimant post-maximum medical improvement.

5. On January 9th, 2018, the single Commissioner sent an email to Counsel stating the following

I have reviewed your fee petition in Pamela Cartee v. SC Judicial Department several times. I have also reviewed the law I believe to be applicable. I can only find justification for a fee of \$59,632.69. If you wish to amend your Form 61 to reflect this amount as your fee, I will approve the fee petition. Otherwise, I am glad to set the matter for a hearing pursuant to the Act. I am happy to hear your position.

6. On January 8th or 9th 2018, Counsel sent a letter to the single Commissioner wherein he averred that he had come in person to the Commission three times without notice in an attempt to initiate communication with the Commissioner regarding the Petition for Attorneys' Fees currently pending before the Commissioner for adjudication. The single Commissioner declined to communicate with him about the matter under review.
7. On January 17th, 2018, the single Commissioner issued a Hearing Notice, setting the matter for the next available date, which was February 12th, 2018.
8. The Hearing was conducted on February 12th, 2018. Counsel was given the opportunity to submit evidence and argue his position.
9. On February 21st, 2018, the single Commissioner issued an Interim Order approving disbursement to Counsel of the amount of fees not in dispute.
10. On February 21st, 2018, Counsel sent a letter to the single Commissioner threatening to "take this matter up with the Supreme Court".
11. On February 22nd, 2018, Counsel sent a letter to the single Commissioner stating that he would hold off on filing anything with the courts if the Commissioner would engage in communication with him about the matter under review.
12. On March 2nd, 2018, Counsel sent a revised Form 61 that changed the amount of the final award listed from the total amount of all benefits, both temporary and permanent, paid, to only the amount of benefits paid post-MMI, but asked for the same amount, \$73,094.45, to be awarded as attorneys' fees.

13. On March 6th, 2018, the single Commissioner issued his Decision and Order Denying the Petition for Additional Attorneys' Fees.
14. On March 7th, 2018, Counsel sent a letter to the single Commissioner reiterating his threat to file litigation with the courts.
15. On March 13th, 2018, Counsel sent a letter to the Commission's Judicial Director, asking her for legal advice.
16. On March 15th, 2018, the Commission's Judicial Director sent an email to Counsel stating "If you file a WCC Form 30 appealing an award of attorneys' fees, the Commission will set the matter for a Hearing in accordance with Section 42-17-50. All parties of record, and the Claimant individually, should be served with any appellate documents."
17. On March 20th, 2018, Counsel filed a WCC Form 30 Request for Full Commission Review, raising seven grounds for appeal.
18. In accordance with longstanding Commission policy, the single Commissioner requested that the appeal be heard En Banc in accordance with Reg. 67-709(B)(1), since the appeal involved novel issues of law and regarded attorneys' fees.
19. On March 23rd, 2018, Counsel sent an email to Commission's General Counsel asking for a legal opinion, and again threatening civil litigation.
20. On April 19th, 2018, Counsel served the Commission with a Temporary Restraining Order Issued Without Notice Pursuant to Rule 65(B), SCRPC, restraining the Commission from taking further action on the Appeal filed by Counsel, that was issued by the Court of Common Pleas for the 4th Judicial Circuit. Despite the prohibition by the court on the Commission taking any action on the Appeal, Counsel filed a Brief of Appellant on April 22nd, 2018.
21. Also on April 19th, 2018, Counsel served the Commission with a Summons and Complaint, listing Counsel in his personal capacity as the Plaintiff and the Commission as Defendants. That matter was referred to the South Carolina Attorney General's Office for defense, and, as of the date of this Decision and Order, is currently pending before the Court of Common Pleas for the 4th Judicial Circuit on Defendant's Motion to Dismiss.
22. On April 27th, 2018, the Temporary Restraining Order expired pursuant to its terms and has not been extended. The Commission is unaware at the time of drafting of any legal prohibition on its issuance of this Decision and Order.

CONCLUSIONS OF LAW

1. Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission. S.C. Code Ann. § 42-15-90 (1976).
2. Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly. S.C. Code Ann. § 42-3-185 (1976).
3. Pursuant to 42-1-100 "compensation" is the money allowance *payable* to an employee or to his dependents.
4. Pursuant to Regulation 67-1205(B) "If the parties agree to a contingent fee contract, the fee is deemed reasonable when the following requirements are met and the requested fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee." S.C. Code Regs. 67-1205(B).
5. The Act requires that "as used in this Title, unless the context otherwise requires, the terms dealt with in §§ 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections." S.C. Code Ann. § 42-1-20.
6. The first sentence of R.67-1205(C) states that "[a]n attorney may charge up to, but not more than, 33.3% of the total amount of *compensation*, except in the following situations, where the attorney shall set the fee as instructed." Reg. 67-1205(C) (Emphasis added).
7. "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439,445 (2009). "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*¹

¹ The abuse of discretion standard is the standard of review to be followed by the courts on appeal; it is not the standard followed by the Commission in this review. The standard of review on Review and Rehearing by the Commission is set forth in § 42-17-50, which is the standard of review applied by the majority in this decision.

8. The single Commissioner held “The determination of the award with finality could not be reached until my order became the law of the case.” We concur. This is a Conclusion of Law that the single Commissioner made, as he is authorized to do under § 1-23-350. The amount of compensation that is to be awarded cannot be determined until the Decision and Order making that award is final.
9. In a footnote to its Decision, the South Carolina Court of Appeals held

Essentially, worker's compensation benefits accrue along a time continuum: TTD benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. See S.C.Code Ann. §§ 42-9-10, -20, -30 (1976); S.C.Code Ann. § 42-9-260 (1996); 25A S.C.Code Ann.Reg. 67-507 (1990) (repealed by 21 S.C.Reg., No. 6, Part 2 at 439, effective June 27, 1997); *O'Banner v. Westinghouse*, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (Ct.App.1995). To require an employer to prove a claimant's disability ended before terminating TTD benefits dilutes the distinction between temporary and permanent disability payments, and it dilutes MMI as the definitive moment when a transition between the two different types of payments is accomplished.

Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999).

10. The language cited from *Hendricks*, above, makes it clear that we cannot award attorneys' fees in the manner requested by Counsel. Post-MMI benefits may be awarded as permanent disability benefits. However, Credit paid to the Employer/Carrier for benefits overpaid is not money allowance payable as described in section 42-1-100, and any funds allocated from the award for the payment of such credit may not be reduced to collect attorneys' fees. The footnote Counsel relies upon was favorably cited by our Supreme Court in *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2006). *Curiel* involved a dispute over the Commissioner's findings regarding maximum medical improvement and temporary total disability. *Curiel v. Environmental Management Services*, 376 S.C. 23, 30, 655 S.E.2d 482, 486 (2006). Neither *Hendricks* nor *Curiel* involved a dispute over an award of attorneys' fees. In the present case, we are not concerned with whether the benefits paid to Claimant post-MMI were temporary or permanent disability benefits. Our concern is that it is not appropriate to allow an attorney to take back benefits that have already been paid to a Claimant to satisfy an attorney's fee. *Hendricks* and *Curiel* do not provide guidance on this issue.

11. Once a Claimant has begun receiving weekly payment of disability for more than 150 days, Defendants cannot terminate payment of those benefits without an order of the Commission. S.C. Code Ann. § 42-9-260 (1976). This is true whether the weekly payments represent temporary or permanent disability benefits. The Act recognizes the hardship that would be placed on a Claimant if she were to lose the weekly disability payments she was receiving prior to an award of permanent disability benefits being finalized. While the award of permanent disability benefits is pending on appeal, Claimant is not secure in her award of permanent disability benefits. Her weekly payment of disability benefits are her only source of living wages prior to the appeal being finalized. It would be unconscionable to require Claimants to pay to their attorneys the weekly benefits they were receiving before the attorney had successfully defended an appeal. Further, such a result is not permitted by the provisions of law that, unlike *Curriel* and *Hendricks*, deal directly with attorneys' fees.
12. Reg. 67-1205(C)(2) does not entitle Counsel to 33.3% of all benefits paid to Claimant post-MMI; it entitles him to 33.3% of the "settlement or award". The award was not finalized until the time for appeal of the Full Commission's Decision and Order had run pursuant to § 42-17-60. The amount awarded at the time the award became final, \$179,077.14, is the amount of compensation from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.²
13. "Compensation" means "the money allowance *payable* to an employee . . ." S.C. Code Ann. § 42-1-100. (Emphasis added). The use of the adjective "payable" to modify "money allowance" limits the definition of "compensation" as used in Reg. 67-1205 to include only "money allowance" that is "payable", and not "money allowance" that has already been "paid" in the past.³

² The Majority disagrees with the Dissent that the "award" became finalized on the date the Full Commission issued its Decision and Order, October 17th, 2017, and that any benefits paid subsequent to this date are subject to be reduced to pay attorneys' fees. Workers' Compensation is unique in that certain circumstances, present in this case, allow a Claimant to be on a running award of weekly benefits while a decision and appeal are pending. It is the Majority's position that the benefits paid weekly to Claimant while the time for appeal had not been exhausted were still not "secure". The Full Commission's Decision and Order did not become the law of the case until the time for appeal had been exhausted. It was not until the Decision and Order became the law of the case that Defendants paid the full award and could properly terminate weekly payments of compensation, thus finalizing the award.

³ The Dissent raises the concern that our analysis overly narrows the definition and application of "compensation" in a manner that could impact our interpretation of this term as it is used in other parts of the Act. We are only analyzing

14. Counsel would have us award attorneys' fees from the "money allowance" that has already been "paid" to the Claimant. We decline to adopt this interpretation. Doing so would create the absurd result where an attorney could force his own client to pay back to the attorney weekly benefits the Claimant had already received. In this particular instance, the amount of permanent disability benefits awarded in the lump sum exceeded the amount of weekly benefits Claimant received from the date of MMI through the date the award was finalized. However, it is possible for the number of weeks in which a Claimant is receiving weekly benefits while the matter is pending on appeal to exceed the number of weeks awarded as permanent disability. Were we to adopt Counsel's position that all compensation paid post-MMI is subject to attorneys' fees, this would create instances where a Claimant would owe her attorney a portion of the benefits already "paid" to her, thus rendering the Claimant a debtor and her attorney her creditor. We hold that such an interpretation is not consistent with Reg. 67-1205 or the purpose of the Workers' Compensation Act. *See Cokeley v. Robert Lee, Inc.*, 197 S.C. 157, 14 S.E.2d 889, 893-4 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results.")
15. Reg. 67-1205(C)(2) provides "If the attorney *secures* the payment of permanent disability later, the attorney may charge up to, but not more than 33.3% of the *settlement or award*." Subsection (C)(2) does not entitle Counsel to 33.3% of the "permanent disability", it entitles him to 33.3% of the "award". In order for an attorney to be entitled to a contingency fee under subsection (C)(2), he must "secure" the payment of the compensation. The award of compensation was not "secure" until the attorney successfully defended the award to

"compensation" as it is used in Reg. 67-1205(C)(2) for the purposes of determining an award of attorney's fees. The term as it is used elsewhere in the Act will be analyzed as the context requires, consistent with § 42-1-20.

finality. At the time the award became final, the Defendants paid the commuted value of the outstanding benefits in the amount of \$179,077.14. It is this amount from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.

16. While Counsel advocates that Reg. 67-1205 entitles him to an award of attorneys' fees of 33.3% of the value of the permanent and total disability award at the time Claimant reaches MMI, we hold that Reg. 67-1205 only allows an award of attorneys' fees of 33.3% of the value of the permanent and total disability award remaining at the time the attorney "secures the payment of compensation."
17. We cannot apply Reg. 67-1205 in the strained manner advocated by Counsel. Reg. 67-1205 does not state that an attorney is entitled to 33.3% of the "permanent disability", it states the attorney is entitled to 33.3% of the "settlement or award".
18. "In doubtful cases, the application of these regulation shall be in favor of the injured employee." S.C. Code Ann. Regs. 67-201(B) (2014 Supp.) Should a court construe any terms in Reg. 67-1205 as doubtful, we find it is objectively in Claimant's favor to have the amount in dispute paid to her instead of her lawyer. Her lawyer has already collected \$69,499.57, and continues to practice law. Claimant, meanwhile, is permanently and totally disabled, and the balance of the award is all the money that can be provided by the Act for her to live on for the rest of her life.
19. The record is devoid of any evidence showing Commission policy is to award an attorney 33.3% of all post-MMI benefits when the Claimant continues to receive weekly benefits before the award is finalized. Counsel has the burden of proving he is entitled to the fee he is requesting. It is not the Commission's policy to grant a contingency fee to be deducted from all benefits paid post-MMI without taking into consideration when the award becomes final and when payment of the compensation is secured by the attorney's representation.
20. The Commission is prohibited by law from making any change to its policies or procedures regarding the approval of attorneys' fees without approval of the General Assembly. See S.C. Code Ann. § 42-3-185. If Counsel wants the policy changed to allow attorneys' fees to be deducted from all benefits paid post-MMI, he must secure such a change through the General Assembly.

21. The General Assembly gave sole authority to approve fees for attorneys to the Commission. See S.C. Code Ann. § 42-15-90. Section 42-15-90 reads, in pertinent part, “Attorney fees . . . for services under this title are subject to the approval of the commission” Section 42-15-90 must be read in context with § 42-3-185. Section 42-3-185 provides

Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly.

S.C. Code Ann. § 42-3-185 (1976, as amended).

It is clear from the two statutes, read together, that it is the intent of the General Assembly that changes in the manner in which the Commission approves attorneys’ fees must be done with approval by the General Assembly in the method prescribed.

22. There is sound reasoning behind the General Assembly’s decision to allow limitations not present in tort cases on the amount of the injured worker’s benefits that could be taken to pay attorneys’ fees. Benefits available under the Workers’ Compensation Act are limited to those expressly provided in the Act. Remedies available at common law such as general damages, pain and suffering, loss of consortium, punitive damages, etc., are not available to the workers’ compensation claimant. Thus a limitation on attorneys’ fees is appropriate. The South Carolina Attorney General has long been of the opinion that § 42-15-90 protects society “from the wrongs to injured employees and their dependents that would likely follow if some restrictions were not placed on the costs of legal services rendered injured workers in the prosecution of their claims for compensation”. S.C. Op. Atty. Gen. 185 (1986).

23. “The principal purpose of [§ 42-15-90] is to protect the workman from the charging of excessive fees”. See S.C. Op. Atty. Gen. 185 (1986), *citing* 1936-37 S.C. Op. Atty. Gen., p. 299.

24. The requested fee in this particular case is unreasonable under Rule 1.5 of the South Carolina Rules of Professional Conduct. The Commission requires that requested attorneys’ fees comply with the South Carolina Supreme Court Disciplinary Rules on

determining a reasonable fee. *See* S.C. Code Ann. Regs. 67-1205(A) and (B). Rule 1.5(a)(3) of the Rules of Professional Conduct and *Glasscock v. Glasscock* require when considering approval of an attorney's fee for the tribunal to consider "customary legal fees for similar service" and "the fee customarily charged in the locality for similar legal service". Counsel has not entered into the record or cited one single example of a fee similar to the one in which he is requesting having ever been awarded by the Commission. As such, we find his request is not for "customary legal fees for similar service".

25. Counsel asserts that it was somehow improper for the Commission to notice certain parties of the Hearings in this matter. We find no error, as Commission Hearings are open to the public in accordance with § 42-3-170. Defendants are clearly a party to the underlying claim.
26. Counsel implies that the single Commissioner somehow acted improperly by consulting with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities. First, we hold that the record is devoid of any evidence that the single Commissioner did so in this instance. Second, we hold that, had the single Commissioner consulted with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities, such action would have been wholly proper, as it is expressly permitted by the Code of Judicial Conduct. *See* Canon(3)(B)(7)(c), CJC, Rule 501 SCACR.
27. Counsel asserts that the single Commissioner did not handle his fee petition in a timely manner consistent with Reg. 67-1204(F) by not "immediately" scheduling a hearing. The single Commissioner found that the Form 61 did not comply with Reg. 67-1205 on January 9th, 2018. The Hearing Notice was issued eight days later on January 17th, 2018, the Hearing was held on February 12th, 2018, and the decision of the single Commissioner was issued on March 6th, 2018. We do not see how the single Commissioner could have disposed of the matter in a timelier manner, and hold that the single Commissioner fully and timely complied with the provisions of Reg. 67-1204(F).
28. We hold that Counsel has received adequate remuneration for his services in this case. Counsel was retained in April of 2014 and the award became final in November of 2017. On September 12th, 2016, he received \$9,866.88, and this Decision and Order awards him an additional \$59,632.69, for a total of \$69,499.57.

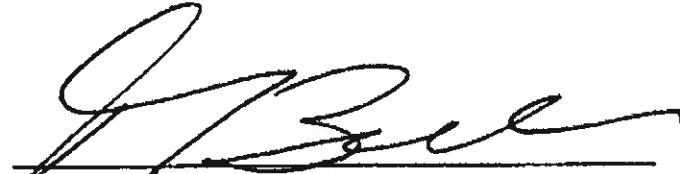
29. In Counsel's correspondence, briefs, and oral statements, Counsel repeatedly refers to the single Commissioner as a "lay commissioner." We find as a fact and rule as a matter of law that the Honorable H. Gene McCaskill is a Workers' Compensation Commissioner appointed and qualified in accordance with § 42-3-20. The Honorable H. Gene McCaskill has been appointed as a Workers' Compensation Commissioner on three occasions by two different Governors, and has been approved unanimously by the Senate on all three occasions. The Honorable H. Gene McCaskill is fully and lawfully qualified, competent, and capable of serving as a Workers' Compensation Commissioner.

ORDER


IT IS ORDERED that Counsel's request for attorneys' fees above and beyond \$59,632.69 is DENIED.

IT IS ORDERED that Counsel shall certify in writing to the Commission that he has paid \$13,461.76 to Claimant within thirty (30) days of the date of this Order.

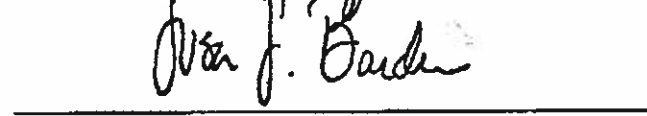
IT IS SO ORDERED!



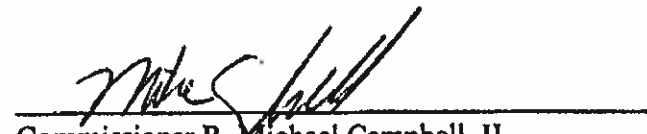
Commissioner T. Scott Beck, Chairman



Commissioner Avery B. Winkerson, Jr.



Commissioner Susan S. Barden



Commissioner R. Michael Campbell, II

CONCURRING IN PART AND DISSENTING IN PART

We concur in part with the majority opinion and would affirm the Single Commissioner's finding that Claimant's award of benefits could not be determined with finality until the date of the Full Commission's Decision and Order on October 17, 2017, when the award became the law of the case. We respectfully dissent from the majority opinion and would reverse the Order of the Single Commissioner in this case on the issue of whether the attorney fees at issue are calculated from the date that the appeal time ran on the Full Commission Decision and Order and the commuted value of the remaining benefits were paid in a lump sum. We find that the attorney's fees in this particular matter are instead calculated from the date of the final order of the

Commission, which is the Full Commission Decision and Order dated October 17, 2017. We base our opinion on the following analysis below.

Supporting case law holds that, essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. *Smith v. NCCI, Inc.*, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006); *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d. 482 (2007). Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits. Maximum medical improvement terminating right to temporary total disability benefits is a factual determination by the Workers Compensation Commission. *Id.*

In this case, MMI was a controverted issue and the Single Commissioner's determination of MMI on October 17, 2016 signaled the end of Claimant's temporary benefits. While Claimant continued to receive weekly total disability benefits after the date maximum medical improvement as determined by the Single Commissioner. Claimant's determination of total and permanent disability was not awarded until October 17, 2017, the date of the Full Commission Decision and Order.

Counsel's argument that the date for the calculation of his attorney's fee award should be the date of maximum medical improvement, October 12, 2016, fails. In this case, Counsel had previously secured additional payment of temporary compensation for his client on a Form 15. Regulation 67-1205(c)(2) states, "If the attorney secures the payment of permanent disability later, the attorney may charge...up to but not more than 33.3% of the settlement or award."

The definition of award is set forth in Black's Law Dictionary. An award is "[a] final judgment or decision." The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989); *see also Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 407 (1991).

S.C. Code Ann. Section 42-17-50 provides for an "application for review" of a single commissioner's decision. Pursuant to the statute governing review, the Full Commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and if proper, amend the award. *Id.* The Full

Commission shall weigh the evidence as presented at the initial hearing and, if good grounds are shown, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *Pack v. State Dept. Of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009). Although it is logical for the Full Commission to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992); see also *Brayboy v. Clark Heating Co.*, 306 S.C. 56, 409 S.E.2d 767 (1991) (Full Commission may review an award of a single commissioner and make its own findings of fact and conclusions of law).

We find Counsel is entitled to attorney's fees as of October 17, 2017, the date of the Full Commission Decision and Order and is not subject to the 30 day appeal period. S.C. Code Ann. Section 42-17-60 states, "an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award ..., may appeal from the decision of the commission to the court of appeals." Section 42-17-50 goes on to state, "In case of an appeal from the decision of the commission on questions of law, the appeal does not act as a supersedeas and, after that time, the employer is required to make weekly payments of compensation... ." The thirty-day supersedeas provision of this section should be construed as requiring weekly payments provided for in the award of the Commission to continue pending determination of the employer's appeal. *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 115 S.E.2d 57 (1960). The legislature intended that weekly payments ordered in an award are to be made until the question at issue is fully determined upon appeal. *Bagwell v. Ernest Burrell, Inc.*, 227 S.C. 168, 87 S.E.2d 583 (1955).

In the present case, there was no appeal from the Decision and Order of the Commission granting Claimant permanent and total disability benefits. As such, the issue of whether or not there was a thirty (30) day supersedeas pending outcome of an appeal is moot. As there was no appeal from the Full Commission Decision and Order, the Findings of Fact and Conclusions of Law of the Full Commission were final and "fully determined" as of the date of the Full Commission Order on October 17, 2017. An award of the Commission is not effectuated until the final Decision and Order of the Full Commission is entered. In this particular matter, Counsel's attorney's fees should be calculated as of the date of the Commission's final Order.

“Every state has some type of provision for subjecting the claimants' attorneys' fees to the supervision of a commission or court handling compensation administration.” Lex K. Larson, *Larson's Workers' Compensation* § 133.01(1) (Matthew Bender, Rev. Ed.) Attorney's fees in South Carolina are "subject to the approval of the Commission." S.C. Code Section 42-15-90. The South Carolina Legislature has directed the Commission to supervise both medical payments and attorney's fees. In addition, the Workers' Compensation Commission has promulgated Regs. 67-1204 and 1205 in governing supervision of attorney's fees.

Regulation 67-1205(c) is applicable to this case and states an attorney may charge up to 33.3% of the total amount of compensation. As noted in the majority opinion, the definition of compensation includes the word “payable”. The majority interprets this definition to limit the term “compensation” to only those payments that have not yet been paid. This interpretation strictly narrows the definition and practical application as to what compensation is. We find the term “payable” in the definition of compensation is broad and applies to any and all payments that were “payable” at their inception, even if at the time of the award some had already been paid.

We also look to case law governing statutory construction to define the term compensation as defined in S.C. Code Ann. Section 42-1-100. Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). Should compensation only be that payable in the future, it would change the characterization of payments of compensation that have already been paid, essentially creating a third class of compensation payments. There would be temporary compensation, permanent compensation previously paid, and permanent compensation to be paid in the future. There is no statutory or case law authority for such a designation. An example of a statute that could not be reconciled under the majority's interpretation is found in Section 42-9-10. This section provides that in no case may the period covered by the compensation exceed five hundred (500) hundred weeks (with exception). If compensation payments are only compensation when they are payable in the future, then the period of compensation under this statute would be indefinite. In addition WCC Forms 18 and 19 designate and report permanent compensation paid, not compensation payable in the future.

As noted above, the statutes governing review of a Single Commissioner's decision places the Full Commission in the same posture as the Single Commissioner for purposes of the review. The Full Commission is the ultimate fact finder. As such, any finding as to whether the Single

Commissioner abused his discretion would not be the applicable standard for the Full Commission, but rather the Court of Appeals or a higher court. See *Kiriakides v. School Dist. of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). As the ultimate finders of fact, the Full Commission must analyze the application of the traditional factors of review of an attorney's fee award.

The factors that should be reviewed in determining a reasonable attorney's fee in any matter are: (1) The nature, extent, and difficulty of the case; (2) The time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991).

With regard to the first *Glasscock* factor, the nature, extent and difficulty of the case, this case involved the pursuit and obtainment of a finding of "permanent and total disability." This is the maximum benefit that can be obtained in a workers' compensation matter, except for matters involving catastrophic injuries such as severe brain damage. In addition, the contested issues included whether Claimant was at maximum medical improvement and whether she was entitled to lifetime medical treatment despite competing medical opinions. Although the Record does not indicate the presentation of any novel issues, the parties' APA Submissions totaled 249 pages in addition to the deposition transcripts of Dr. Lembo and Dr. Healy.

As to the second *Glasscock* factor regarding time, Workers' Compensation attorneys are traditionally engaged with contingency contracts that are subject to Commission approval, so the factor of the number of hours expended by an attorney is not usually directly considered by the Commission. However, it may be relevant in the aspect of considering the complexity of a matter. Counsel cites in his Form 61A that he has hundreds of hours in this case. It is unknown how many hours may have been performed by Counsel for the increase in temporary compensation. It is noted that Counsel previously obtained a tangible result for the Claimant in increasing her compensation rate; a fee has already been approved by order of the Commission for that pursuit. It was calculated from the back payment of the increase in award. As indicated herein, future payments of temporary total are not subject to an award of attorney's fees by custom which is codified in Regulation 67-1205.

As to professional standing and experience of counsel, the third *Glasscock* factor, Counsel (McDaniel) regularly appears before the Workers' Compensation Commission exclusively

representing injured workers. His Form 61A filed with the Commission indicates that he has been practicing for over 41 years.

This matter involves that of a contingency contract as outlined in *Glasscock* factor number four. This is the method of payment customarily and traditionally before the Commission.

The determining factors in this matter involve what beneficial results were obtained and what is the customary legal fees/calculation applied by the Commission, which are the fifth and sixth *Glasscock* factors. The benefit obtained in this matter was not secured until the final award of the Commission. The award of attorney's fees is customarily calculated from the amounts that are secured by counsel in a case pursuant to an award. In most circumstances, including the facts of this underlying claim, amounts from a running award of weekly payments are not customarily subject to attorney's fees, as they are automated. The pivotal issue in the workers compensation award of attorney fees is what is customary. No matter what the characterization of the compensation is, temporary or permanent, the fees are granted to the amount of the award that is obtained by the efforts of the attorney. Attorney's fees are not traditionally granted to an amount based on a running award under the facts of this case. The Regulations cite specific situations in which the Commission notes that fees are not payable on a running award. For example, an award of attorney's fees are not made on continuing temporary total benefits or where a Claimant's attorney has defeated the termination of a running award. In this case, a fee was allowed on back temporary total disability benefits as the Claimant's attorney successfully obtained a beneficial increase; but, although the attorney obtained the increased, running award for the Claimant, he is not entitled to a fee of the continuing temporary compensation. This particular custom is cited within Regulation 67-1205(c)(2), itself. Again, R. 67-1205(c)(2) allows a fee of 33.3% of a later award or settlement. In this case, the benefit was not obtained until Counsel effectuated and secured the final award as stated above.

We find that due to the factors reviewed that the award of attorney's fees in this matter should be calculated as 33.3% of the amount awarded to Claimant as of the date of the final award of the Commission, which is the Full Commission Decision and Order dated October 17, 2017. For the reasons as set forth above, we would affirm in part and reverse in part the Order of the Single Commissioner.



Commissioner Melody L. James



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia on May 30, 2018

Exhibit 15

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

May 31, 2018

Eugenia Hollmon - ehollmon@wcc.sc.gov
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Pamela Cartee v. SC Judicial Department
WCC File No. 1307922

Dear Eugenia:

I am in receipt of the Full Commission Decision and while Mr. Milling and I will be filing a Petition for Re-Hearing w/in 30 days, I believe a revised order needs to be filed and served as there are several corrections that need to be made under "appearances" and throughout the Order where it only lists me, Preston F. McDaniel on his own behalf whereas both I and my co-counsel, the Honorable John M. Milling, Esq, both appeared at the Hearing and are both the attorneys and Petitioners requesting approval of the balance of our attorney's fees by the Full Commission. The order needs substantial revision in that regard alone.

Most importantly I do not see where Mr. Milling was served.

First, I would appreciate it if I could be forwarded a copy of the vote sheets with any notes as is provided for by the Regulations.

Next, the Order reflects that Commissioner McCaskill requested En Banc consideration by the Commission whereas by written email after my inquiry, I was advised that the reason this matter was set *En Banc* was because it is "Commission Policy" in reference to attorney fee disputes and that Commissioner McCaskill had not made the request. In my inquiry I had specifically asked for the written request if it had been made by Commissioner McCaskill pursuant to Reg. 67-709 (B) (1) and my understanding of the Regulations.

In that regard I would appreciate either a copy of the Commission policy of hearing all attorney fee disputes *En Banc* or a copy of Commissioner McCaskill's written request for an *En Banc* Hearing. I will be glad to forward to you, if you can't find it, my original email request concerning why this matter was set *En Banc* and the Commission's reply.

Eugenia Hollmon
May 31, 2018
Page 2

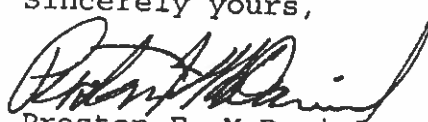
Also, since multiple members of the Commission staff were present during the Hearing including General Counsel and the Commission Judicial Director, I would appreciate it if I could be advised or forwarded a copy of the Court Reporter's notations as to who was present during the argument.

I look forward to hearing from you and as to whether or not a revised Order will be served; again specifically, since the Order as written is inaccurate in that Mr. Milling and I both requested approval of the attorney's fees and Mr. Milling and I were both the Petitioners in this matter.

Finally I previously requested being advised as to whether or not pursuant to Statute (42-17-40) a copy of the Hearing Transcript before the Hearing Commissioner was made a part of the Record.

I look forward to hearing from you soon.

Sincerely yours,



Preston F. McDaniel

PFM/smk
Enclosure

Exhibit 16

Roberts, Keith

From: Bracy, Amy
Sent: Friday, June 1, 2018 4:26 PM
To: Roberts, Keith
Subject: FW: Pamela Cartee, 1307922
Attachments: Cartee votesheet.docx.pdf

FYI

From: Bracy, Amy
Sent: Friday, June 01, 2018 4:25 PM
To: 'preston@pfmcdlaw.com' <preston@pfmcdlaw.com>; 'Sabrina Kelley' <sabrina@pfmcdlaw.com>
Subject: Pamela Cartee, 1307922

Dear Mr. McDaniel:

We are in receipt of your letter dated May 31, 2018. Please allow this to serve as a response.

Mr. Milling was not served with a copy of the Decision and Order as he was neither a party to the December 8th, 2017 Form 61 Fee Petition nor the March 20th, 2018 Form 30 Request for Full Commission Review. We are happy to send him a copy of the Decision and Order.

Pursuant to your request, enclosed please find copies of the Vote Sheets completed in accordance with Reg. 67-709(C).

Regarding your request for copies of Commission policy regarding fee disputes or a copy of Commissioner McCaskill's written request for *En Banc* Hearing, the Commission has never adopted its policy in writing but rather follows this policy in practice, and Commissioner McCaskill made his request for *En Banc* review verbally.

If you would like information regarding the transcript, you must request a transcript from the Court Reporter directly.

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
1333 Main Street
Columbia, SC 29201
803-737-5672

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: FC
Attorney: FC

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part

- see written opinion.

REMAND

Before me dated: 5-30-2018
Columbia, SC

Signed: *Malcolm F. James*
Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: Full Commission
Attorney: Full Commission

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part
- See written opinion .

REMAND

Before me dated: 5/30/2018
Columbia, SC

Signed: _____
Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: *Beck*
Attorney: *Roberts*

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part

REMAND

Before me dated: 5/31/18
Columbia, SC

Signed: *J. Beck*
Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner:
Attorney:

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part

REMAND

Before me dated: 5/21/18
Columbia, SC

Signed: Mike Skill
Commissioner

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)**

**Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill**

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: Back
Attorney: _____

AFFIRM

____ REVERSE

____ AFFIRM with Amendments:

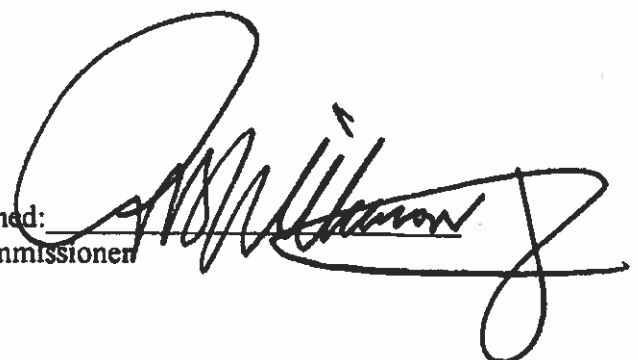
____ VACATE

____ AFFIRM in Part/REVERSE in Part

____ REMAND

Before me dated: 5-23-2018
Columbia, SC

Signed: _____
Commissioner



**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)**

**Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill**

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner:
Attorney:

AFFIRM

REVERSE

AFFIRM with Amendments:

VACATE

AFFIRM in Part/REVERSE in Part

REMAND

Before me dated: _____
Columbia, SC

Signed: _____
Commissioner

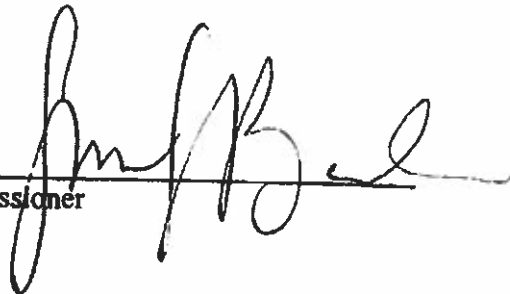


Exhibit 17

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

June 25, 2018

VIA EMAIL - abracy@wcc.sc.gov
AND US MAIL

Ms. Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Pamela Cartee v. SC Judicial Department
WCC File No. 1307922

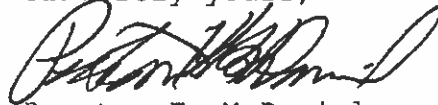
Dear Amy:

Although we have not been properly served pursuant to S.C. Code §42-17-60, we are going ahead and filing a Motion to Rehearing to the Order entered by the Full Commission in the above-referenced matter. You will please take notice that on May 31st, 2018, I previously filed notice of our intent to file a Petition for Rehearing and my request that the Order be redrafted so that it was properly captioned and notice that it had not been properly served on my co-counsel.

Enclosed is the required number of copies pursuant to the Commission Regulations and the required \$25.00 filing fee. Upon proper service of an Amended Order, properly served on the parties to this action involving a request of the approval for attorneys fees, I will be glad to file an Amended Motion for Rehearing.

I am including an Affidavit of Service on Ms. Cartee who is the only other party to the action which as noted by the Full Commission waived appearance and has no objection to the fee as requested being approved by the Commission.

Sincerely yours,



Preston F. McDaniel

PFM/abh
Enclosure

cc: John Milling, Esquire (via email johnmilling@bellsouth.net)
Pamela O. Cartee

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

PRESTON F. MCDANIEL AND)
JOHN MILLING,)
Attorneys at Law)

v.)

South Carolina Workers)
Compensation Commission)
Commissioner McCaskill Order)
Concerning Attorneys Fees)

IN RE:)

PAMELA CARTEE, Employee,)
Claimant,)

v.)

SC JUDICIAL DEPARTMENT,)
Employer, and)

STATE ACCIDENT FUND,)
Insurance Carrier,)
Defendants.)

MOTION FOR REHEARING
CONCERNING THE
FULL COMMISSION ORDER
NOT PROPERLY SERVED AS
OF THIS DATE PURSUANT
TO §42-17-60

Pursuant to the S.C. Code §1-23-380, SCACR 201 and the decisions and opinions of the South Carolina Supreme Court and Court of Appeals, the Petitioners, Attorneys for the Claimant hereby move for Rehearing before the Full Commission en banc for the reasons as set forth hereinafter:

1. That it is a fatal defect for an Order to be improperly captioned. In this matter, the Order of the Full Commission is captioned as being an Order in the Matter of: Pamela O. Cartee, Claimant v. South Carolina Judicial Department, Employer and State Accident Fund, Carrier. That is not the case. A review of the Form 30 filed with the Commission will show that this Appeal is in reference to, not a fee dispute, but a Request for Review of the Order denying a portion of the attorneys fees request made by the attorneys. This is not a dispute between the attorneys and the Claimant as noted by the Commission nor are the Defendants in any way involved as parties to the action. The parties to this action are at most, the Commission, the attorneys for the Claimant and the Claimant and this action is an ex parte action by the attorneys, In Re (in the matter of) Ms. Cartee versus the Employer and Carrier. It is elementary pleading practice that the title and caption of an action/pleading are jurisdictional and is a fatal flaw.

2. That according to the vote sheets, four (4) Commissioners voted simply to, "affirm" and two (2) of the Commissioners voted to affirm with amendment. As to the four (4) members that voted to affirm, that is a vote to affirm as written. If the Commissioners deem it appropriate to make any modifications to the hearing Commissioner's Order, the Commission Regulations require that the Commissioners, "shall

agree on a modification, if any, and record their Findings of Fact and Conclusions of Law on a vote sheet." [Reg. 67-709(E)(2)]. Instead of an Order to confirm the decision of the Commissioner which is what the Commission voted to do, an entirely separate Order with separate Findings of Fact and Conclusions of Law was entered which is in derogation of the Commission's Regulations.

3. That the decision of the Full Commission which is in derogation of Commission Regulations states that the Full Commission had reviewed the Record and considered the position of counsel. Assuming that the new separate Order issued by the Full Commission is appropriate, the Commission's own Regulations and Guidelines require that the drafting party is required to set forth the APA Submissions and documentation and transcript that was reviewed by the Commission.

First, the Petitioners repeatedly requested that the Commission confirm that a copy of the transcript of the hearing before Commissioner McCaskill had been made a part of the Record pursuant to S.C. Code §42-17-40. No confirmation has ever been received and no reference to the content of the hearing, including the case law, Regulations and documentation submitted to Commissioner McCaskill is set forth in the Order. The Order needs to be amended to establish that the transcript of the

hearing and the documentation submitted to the Commissioner was made a part of the Record and considered by the Commission.

4. That Finding of Fact No. 1 is appropriate but fails to note that through the efforts of counsel, Claimant's compensation rate was raised by \$184.02/week resulting in an additional award to the Claimant over the 500-week period which was ultimately paid of approximately \$92,010.00. The fact is not noted anywhere in the Record that the attorneys did not request a fee for the entire period of time of the Award. Assuming that the Commission decision is correct only as of the payment of a lump sum, for the period of time from the payment date of back due temporary total, the underpayment from the time of the prior Award on September 12, 2016 through the date of payment of a lump sum on December 1, 2017 would be a figure of over \$15,089.64 thus entitling the attorneys on that basis alone of over \$5,000.00.

5. That Finding of Fact No. 2 fails to note the date of maximum medical improvement which is the date under Supreme Court decisions that the award of temporary weekly benefits transitions to being an Award of part of the permanent disability award made by the Commission.

6. That Finding of Fact No. 3, although not made in Commissioner McCaskill's Order, is in accordance with the Record.

7. That as to Finding of Fact No. 4, the Finding of Fact misstates the Record in that the attorneys fees requested was requested as part of the permanent Award made to the Claimant under the permanent disability Award made to the Claimant for a total and permanent disability in the amount of \$220,283.33. It also misstates that the attorneys fees requested is for 33.3% of the permanency award made to the Claimant. The Finding also contains a calculation that is not part of the Record before the Commission and is also not a Finding of Fact made by Commissioner McCaskill in his original Order.

8. That the Finding of Fact No. 5 is in accordance with the Record but Finding of Fact No. 6 goes outside the Record and makes statements concerning whether or not notice was given by Commission and refers to, "adjudication" instead of, "approval" and makes a statement outside of the Record that the single Commissioner had, "declined to communicate with him about the matter". It fails to note that Commissioners and attorneys regularly communicate concerning fee petitions under consideration concerning any questions the Commissioner may have.

9. That Finding of Fact No. 7 again is not a Finding made in the hearing Commissioner's Order that was affirmed by the Commission, nor does it set out the reason that a hearing was set at that time or the parties that were notified.

10. That while Finding of Fact No. 8 was not made by the hearing Commissioner, it is accurate as to the hearing being held but fails to note what evidence was submitted and the position of the Petitioners nor is there any reference again to the Case Law and/or the date of maximum medical improvement in this Finding.

11. That Finding of Fact No. 9 while not included in the hearing Commissioner's Order, is accurate as to the date of the Interim Order of the hearing Commissioner.

12. That Finding of Fact No. 10 and Finding of Fact No. 11 are not contained within the Commissioner McCaskill's order and as written are inaccurate as to the Record and as written potentially accuse the Petitioners of improper conduct.

13. That as to Finding of Fact No. 12, outside of not being made as part of the hearing Commissioner's decision which was affirmed by the Full Commission, is inaccurate in that there was no change in the amount of the Award from which the attorneys fees were requested. The only purpose of the amended Form 61 was to make is perfectly clear, due to scrivener's errors, that the request for the attorneys fees was based on the permanent Award as of the date of maximum medical improvement at which time under the Supreme Court decisions and statutes the Award became final.

14. That Finding of Fact No. 14 is not contained within the hearing Commissioner's Order and further is inaccurate in that there has never been a request for additional attorneys fees. The request for attorneys fees was and has remained as being from the final Award of the Commission.

15. That as to Finding of Fact No. 14 while not being a part of the Commissioner's Order, it also contains an inaccurate representation of the Facts and in addition misstates the letter in that it is clearly a notification for the Record and there is not, "threat to file litigation". There is also a failure to note that one of the purposes of the letter was to note in the Finding that the Order had not been served on one of the Petitioners, co-counsel in this case, Mr. John Milling.

16. That Finding of Fact No. 15 is not part of Commissioner McCaskill's Order and is further a misstatement of fact and should not be included.

17. That Finding of Fact No. 16 again is not part of Commissioner McCaskill's Order that was affirmed by the Full Commission.

18. That Finding of Fact No. 17 is an accurate statement of the filing of the Form 30.

19. That as to Findings of Fact 18 through 22, they are not part of the original Order affirmed by the Full Commission and are further inaccurate for the following reasons:

A. Petitioners were originally advised that the matter was set for review by a Full Commission Panel but was then set en banc. Upon inquiry, the Petitioners were advised that it was set en banc due to the Commission policy to hear all Attorney Fee issues en banc and that there had been no request for an en banc hearing by Commissioner McCaskill. Subsequently, the Petitioners were advised that Commissioner McCaskill had made a verbal request and further after inquiry for the policy they were advised that the policy of the Commission to hear attorneys fee issues en banc was not a "written" policy of the Commission.

B. As to Finding of Fact No. 19, the Finding as written is inaccurate as to the Record and in no way had Petitioners threatened litigation.

C. Finding of Fact No. 20 is an inappropriate Finding of Fact and misstates the Record.

D. Finding of Fact No. 21 is an inappropriate Finding of Fact, fails to note both co-counsel as Petitioners and has nothing to do with the issues before the Commission on appeal.

E. Finding of Fact No. 22 is not appropriate as to any of the issues on appeal and is a misstatement of the Record and is not factual in that counsel for the Defendant, the Assistant Attorney General assigned, advised the Commission that

the Temporary Restraining Order was allowed to dissolve thus allowing the Full Commission to rule.

20. That Conclusion of Law No. 1 is an inaccurate statement of the law as attorneys fees are subject to the approval by the Commission or a "court of competent jurisdiction".

21. That Conclusion of Law No. 2 properly notes the applicable Code sections, however it fails to note the date of and citation to the requirement that before any procedures become effective as promulgated under the Administrative Procedures Act in reference to attorneys fees that those Regulations before promulgation under the Administrative Procedures Act must have received approval of the Judiciary Committees of the Senate and House of Representatives and also by Concurrent Resolution of the General Assembly. There is no citation as to the Acts and Joint Resolutions and/or the Record of the Senate and House Journals as to the promulgation under law that those statutory requirements have been met.

22. That Conclusion of Law No. 3 and 4 are accurate in reference to the Code sections and Regulations (whether or not the Regulation has been properly adopted) as set forth in the South Carolina Code of Laws as does Conclusion of Law No. 5 and Conclusion of Law No. 6 to the extent that those apply to an

award of compensation, but to not other representation of a claimant on other issues before the Commission.

23. That Conclusion of Law No. 7 specifically is not contained within the decision of the hearing Commissioner and cites to Case Law inapplicable to a South Carolina workers' compensation case and as to attorneys fees in a workers' compensation action. Also, the footnote under Conclusion of Law No. 7 is not referred to by the hearing Commissioner and is an appropriate and an inaccurate statement at to the review of the Commission.

24. Conclusion of Law No. 8 is in derogation of the holdings of the Supreme Court. The Supreme Court has specifically held that the payment of any Award of the Commission dates back to the date of that Award where that Award is affirmed on appeal. As is addressed and as set forth hereinafter this Conclusion of Law and more importantly Conclusion of Law No. 9 through 29 are not included in the Order of Commissioner McCaskill affirmed by the Full Commission and in addition thereto are legal argument. It is unethical for a Commissioner or the Commission to seek legal advice without specific notice to the parties. In this case, the Record consists of the documents placed in the Record under the APA before Commissioner McCaskill and the law including the decisions, statutes and regulations as presented to Commissioner

McCaskill for decision. For the Commission, no matter who it is, to request a legal interpretation without advising the Petitioners that such legal interpretation was being requested or sought is a violation of Petitioners due process rights to be confronted by their accuser. These Conclusions of Law contain numerous legal positions and opinions and Petitioners have been given no notice of such legal interpretation or opinion. As to each Conclusion of Law set forth the Petitioners would further submit:

A. No. 10 is a legal analysis, cites Case Law that was not submitted to the hearing Commissioner or noticed to the parties including Curriel v. Environmental Management Services and cites improper legal opinion to the effect that in some way there is some kind of a difference between an award of permanent disability involving the payment of weekly payments of compensation benefits in reference to an award of attorneys fees as compared to a permanent award as to the payment of compensation to a Claimant. This Conclusion is totally wrong under §42-9-10(D) and Glover by Carolton v. Suitt.

B. No. 11, the stop payment statute as referred to was not cited in the Commissioner's Order and has absolutely nothing to do with a permanent award. While this Conclusion is not included and should not have been made, it is further more unconscionable to place a chilling effect on a Claimant and

his/her right to a Claimant's attorney and to place the Claimant's attorney in an obvious conflict of interest and having to make a Hobsons's choice of whether or not to appeal or accept an amount less than awarded but which would increase his fees. In this case, had the Claimant's attorney's negotiated a settlement at the time of the Award for 95% of the Award at the time that it was made thus saving the Defendants 5%, they would have increased their fees by more than that requested which would not have been in the best interest of the Claimant. This Conclusion is also in violation of the Supreme Court Rules, Case Law and Statutory Law.

C. Conclusion No. 12 is contrary to Case Law and Statutory Law. The Award is final as of the date that it is made if it is affirmed on appeal. Those will not be addressed again, but this is legal opinion that is contrary to Case Law and Statute and to which counsel has never been given the opportunity to respond. Most respectfully, whoever wrote this decision under these legal principles has misinterpreted established Black Letter Law. See Case v. Hermitage Cotton Mills for a recitation of the principle that the Award of the Commission dates back to the date that the award was to start whenever it is finally resolved at whatever level. Also see the Amendments to S.C. Code §42-17-60 that clearly states that the award of the Commission made in reference to a permanent award

is held in abeyance during the pendency of an appeal and is then payable with interest and penalty thereafter back to the date of the first Award.

D. Conclusion of Law No. 13 and the footnote thereunder, specifically points out the whole problem with the legal decision being entered by the Commission and the Commission not following established Case Law. The footnote reads like a debate of two competing legal opinions between members of the Court of Appeals or the Supreme Court. The Commission is a quasi-judicial body and is charged with the responsibility of administering the law in accordance with the decisions of the Supreme Court, Court of Appeals and the statutes as implemented by the Legislature. It also has the authority to adopt Regulations in accordance with the statutes passed by the Legislature and most importantly, must follow its own Regulations once adopted. There is no reference to the requirement that Commissioner McCaskill was to immediately approve the attorneys fees or to amend it and return it or set the matter for hearing immediately.

E. Conclusion of Law No. 14 is simply a further dictation of a legal opinion and is likened to a brief. None of this was raised nor cited to the Commissioner or have the Petitioners been notified of any such legal interpretation and while Petitioners are criticized in the Findings of Fact this

legal interpretation by the Commission was never noticed to the Petitioners. Further, this Conclusion fails again to note the chilling effect this decision would have on the right of a claimant to obtain legal representation and also how it violates freedom of contract. The Petitioners should be allowed to respond to this interpretation and have an open-ended discussion in reference to this with the Commission at a minimum.

F. Conclusion of Law No. 15 is again a misstatement of law as the Supreme Court since 1940 and ever since then and the Legislature specifically since 2007 with the Amendments noted and specifically set forth that the Award dates back to the date that the permanent Award is made. This again would put a tremendous chilling effect on the right of a claimant to counsel and in addition would place counsel in a Hobson's choice in reference to the best interest of his client in reference to an appeal as does Conclusion of Law No. 16, 17 and 18.

G. As to Conclusion of Law No. 19, contrary to that Conclusion of Law, the Record is devoid of any evidence showing that it is not the Commission policy nor a Regulation or more importantly, statutory law to award an attorney(s) a one-third (1/3) fee of all benefits obtained under the Award of the Commission. Uncontradicted as an Officer of the Court as put into evidence and as the Commissioner should know, counsel requested to be placed under oath and the Commission accepted

his comments as an Officer of the Court that he had submitted in the past numerous fee petitions; that no Commissioner prior to this time has ever not approved those fees as requested; and that this is the first time any fee petition has ever been questioned in the at least 42 years that either of Petitioners has been practicing law. In fact, it is uncontradicted in the Record that every Commissioner that heard this matter en banc and also including the hearing Commissioner has approved attorneys fees from the date of the Award of the Commission. There is nothing in the Record nor any contradictory statement nor is there any statement by any Commissioner hearing this matter contradicting to that.

H. As to Conclusion of Law No. 20, there is a constant reference to the policies of the Commission. Without recitation, first there was nothing in the Record to establish that the requirements of §42-3-185 were complied with by the Commission in the adoption of its urgent Regulations concerning attorneys fees. In fact, this issue was not raised and is not part of the hearing Commissioner's decision. Further, there is nothing in the Record that it is not the policy of the Commission to award attorneys fees from the date of the final Award of the Commission. In fact, the Commission has no right to establish policies but has the statutory authority and responsibility to follow the statutes and the Case Law

interpreting the statutes and Regulations and to adopt, under law, Regulations to enforce the Workers' Compensation Act. Prior to this controversy, the Commission cannot point to one Regulation, Statute or Supreme Court decision and in fact, the Commission is duty bound to follow its Regulations as adopted and not to re-interpret those based on an unpublished policy.

I. The paragraph as set forth hereinabove, Conclusion of Law No. 21 is just simply wrong. The power to approve attorneys fees is granted on a very limited basis but it is not limited to the Commission. Attorneys fees are subject to the approval of the Commission or a Court of competent jurisdiction. Further, while the section for approval of attorneys fees is set out, nowhere within the Commission's Order or even after numerous requests has the Commission ever produced the Senate journal, the House journal and/or the Acts and Joint Resolutions of the General Assembly nor is there any citation to those approving those Regulations of the Commission concerning attorneys fees prior to their implementation.

J. As to Conclusion of Law No. 22, there is no reference to that anywhere in the Commissioner's Order as there is no reference to No. 23.

K. As to Conclusion of Law No. 24, it is not actually a Conclusion of Law and is not based on the Record. The Commission has not set forth one example of where a fee as

requested in this case was not found to be in accordance with Statute, Case Law and Regulations prior to this situation. The Commission must base its findings on the Record and Petitioners uncontradicted statement in the Record that the fees as requested have readily been approved by the Commission in the past is not contradicted.

L. Conclusion of Law No. 25 has nothing to do with the issue other than public notice of a hearing as compared to the listing of parties on the notice that are parties to the action which is an elementary part of pleadings, due process and proper procedure.

M. Conclusion of Law No. 26 was not cited by the hearing Commissioner and although requested, the Commissioner advised of no communication with anyone concerning his position and in fact he refused to state his position on the Record. Also a party is entitled to due process and both the Commissioner and general counsel had an obligation to notify the Petitioners if such extra-judicial legal opinion was sought.

N. Conclusion of Law No. 27 is inappropriate as not being addressed in the hearing Commissioner's Order. However, it is further inappropriate in that there is no basis for a month and a half delay in addressing the attorneys fees request entered on December 8th.

C. Conclusion of Law No. 28 is not a conclusion of law and for all of the above-stated reasons is inappropriate.

P. Conclusion of Law No. 29 is an inappropriate Finding of Fact outside of the Record and misstates the Record. There has never been any challenge to the qualifications of Commissioner McCaskill to serve as a Workers' Compensation Commissioner. This Conclusion of Law is inappropriate and further does not go to the issue involved which is that the Commissioner is required to follow the law as dictated by the Statutes, Supreme Court decisions and Regulations and the Commission is required by law to provide the Petitioners and all parties with due process of law. Due process provides and requires notice of the issues to be presented and considered. At no time prior to or at the hearing, before the hearing Commissioner nor at the hearing before the Full Commission was Petitioners advised of the, "legal interpretation" of the Commissioner. Again, the Commission is not a Court. It is a quasi-judicial body and is required by law to follow the statutes, the Case Law interpreting those statutes and its own Regulations and to comply with the requirements that any outside legal advice is to be noticed to the parties.

CONCLUSION

The Petitioners respectfully request reconsideration pursuant to the decision of the South Carolina Supreme Court

including rehearing and an opportunity to address all of these issues.

At a minimum, the Commission should consider the Petition for Rehearing and should grant a hearing or recaption the case so that it is in compliance with law and should strike all Findings of Fact and Conclusions of Law that are not in accordance with the decision of the Commission which was simply to affirm the decision of Commissioner McCaskill as written.

Respectfully submitted by:



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083
Attorneys and Petitioners

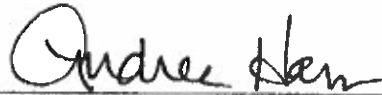
June 25, 2018

CERTIFICATE OF SERVICE

WCC File No.: 1307922

I hereby certify that I have on June 25, 2018 served the following in the matter of Pamela O. Cartee v. SC Judicial Department with a copy of the **MOTION FOR REHEARING CONCERNING THE FULL COMMISSION ORDER NOT PROPERLY SERVED AS OF THIS DATE PURSUANT TO §42-17-60** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Pamela Cartee
1825 Woodbine Drive
Hartsville, SC 29550



Andrea Ham, Legal Assistant

SWORN TO BEFORE ME this
25th day of June, 2018.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 10/25/18

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

Workers' Compensation Commission

June 26, 2018

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave.
Columbia, SC 29201

Carrier Code No. 00500

Carrier File No. 2013001614

Re: WCC File No. 1307922
Pamela Cartee v. SC JUDICIAL DEPT.
Date of Injury: 03/01/2013

The enclosed Motion is being returned for the following reason(s):

The attached motion is being returned to you because it has been received untimely. Any motion for reconsideration must be made within five (5) days of the date that the order, opinion, or award is served. S.C. Code Ann. Regs. 67-215(B) (2018 Supp.); S.C. Document Number 4735, effective February 23, 2018. The final Decision and Order of the Full Commission was served electronically on you May 30, 2018 making the due date for the Motion June 4, 2018.

Once the hard copy is received the Motion and the filing fee will be returned promptly. Please let me know if you have any additional questions or concerns.

Sincerely,

Eugenia C. Hollmon
Judicial Docketing Director
803-737-5737

c:
Pamela O Cartee
1825 Woodbine Dr
Hartsville, SC 29550

JOHN M MILLING, Esquire
ATTORNEY AT LAW
PO Box 519
DARLINGTON, SC 29532-3216

Exhibit 18

State of South Carolina



1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715

Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

EXHIBIT

A

Workers' Compensation Commission

June 26, 2018

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave.
Columbia, SC 29201

Carrier Code No. 00500

Carrier File No. 2013001614

Re: WCC File No. 1307922
Pamela Cartee v. SC JUDICIAL DEPT.
Date of Injury: 03/01/2013

The enclosed Motion is being returned for the following reason(s):

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Once the hard copy is received the Motion and the filing fee will be returned promptly. Please let me know if you have any additional questions or concerns.

Sincerely,

Eugenia C. Hollmon
Judicial Docketing Director
803-737-5737

c:
Pamela O Cartee
1825 Woodbine Dr
Hartsville, SC 29550

JOHN M MILLING, Esquire
ATTORNEY AT LAW
PO Box 519
DARLINGTON, SC 29532-3216

Exhibit 19

The South Carolina Court of Appeals

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire, and John. M.
Milling, Esquire, Appellants,

v.

South Carolina Workers' Compensation Commission,
Respondent.

Appellate Case No. 2018-001234

ORDER

Appellants have filed a motion requesting this court dismiss this case based on the Appellants' withdraw of the appeal. After careful consideration, the motion is granted and this appeal is dismissed pursuant to Rule 260(c), SCACR. The remittitur will be sent as required by Rule 221(b), SCACR.

Columbia, South Carolina



FOR THE COURT

cc:

Preston F. McDaniel, Esquire
John M. Milling, Esquire
James Keith Roberts, Esquire
Alan McCrory Wilson, Esquire
Thomas Parkin C. Hunter, Esquire
Harley Littleton Kirkland, Esquire

FILED
July 31, 2019

Exhibit 20

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF DARLINGTON)	FOURTH JUDICIAL CIRCUIT
)	
Preston F. McDaniel, Esquire and John M. Milling, Esquire)	2018-CP-16-00334
)	
Plaintiffs,)	JOINT STIPULATION OF DISMISSAL
)	
v.)	
)	
South Carolina Workers' Compensation Commission,)	
)	
Defendant.)	
)	
_____)	
IN RE:)	
)	
South Carolina Workers' Compensation Commission)	
)	
WCC File No. 13079222)	
_____)	

Pursuant to Rule 41(a)(1), SCRCF, the parties hereby stipulate and agree to dismiss this action with prejudice.

I so stipulate:

s/ Harley L. Kirkland
HARLEY L. KIRKLAND
ASSISTANT DEPUTY ATTORNEY GENERAL
Office of the Attorney General
SC Bar Number 100382
PO Box 11549
Columbia, SC 29211
Phone: (803) 734-0406
HKirkland@scag.gov

ATTORNEY FOR THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

We so stipulate:

s/ Preston F. McDaniel (signed with consent)

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, South Carolina 29201

And

s/ John M. Milling (signed with consent)

John M. Milling
Milling Law Office
88 Public Square Darlington, SC 29532
(843) 393-4083

PLAINTIFFS

June 29, 2022

Exhibit 21

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 35 years.

Preston F. McDaniel
Matthew C. Robertson

Telephone (803) 771-7211
Facsimile (803) 252-0709

June 10, 2022

Amy Bracy, Judicial Director
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Ex-Parte Preston F. McDaniel & John M. Milling,
Attorneys at Law, in Re: Fee Petition filed in
WCC File No. 1307922,

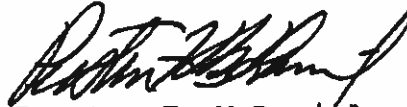
In Re: Pamela O. Cartee v. SC Judicial Dept.
WCC File No. 1307922

Dear Ms. Bracy:

Please find enclosed for filing with the Commission the original and one (1) copy of our MOTION FOR REHEARING OF THE EN BANC DECISION OF THE WORKERS' COMPENSATION COMMISSION IN REFERENCE TO ATTORNEY FEE PETITION FILED IN SCWCC FILE NO. 1307922 REFILED AND SERVED BY REGULAR MAIL ON JUNE 6, 2022 in the above-referenced matter along with the required \$50.00 filing fee.

I hope this is sufficient for filing with the Commission; however, if additional information is needed, please feel free to contact me at your convenience.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: John M. Milling, Esquire
Ms. Pamela O. Cartee

SCWCC
JUN 13 2022
JUDICIAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1307922

EX-PARTE PRESTON F. MCDANIEL)
& JOHN M. MILLING, ATTORNEYS)
AT LAW, IN RE: FEE PETITION)
FILED IN WCC FILE NO. 1307922,)

Petitioners.)

IN RE:)

PAMELA O. CARTEE,)

Employee-Claimant,)

v.)

S.C. JUDICIAL DEPARTMENT,)

as Employer, and)

STATE ACCIDENT FUND,)

as Carrier,)

Defendants.)

MOTION FOR REHEARING OF
THE EN BANC DECISION OF
THE WORKERS' COMPENSATION
COMMISSION IN REFERENCE TO
ATTORNEY FEE PETITION FILED
IN SCWCC FILE NO. 1307922
REFILED AND SERVED BY REGULAR
MAIL ON JUNE 6, 2022

Pursuant to agreement, the Commission Regulations and the statutory law, the Petitioners are filing this Motion for Rehearing pursuant to Regulation 67-215 for disposition en banc by the SC Workers' Compensation Commission. The Petitioners seek rehearing limited to the Petitioners' request for approval of attorneys' fees and would submit both a proposal for a prospective application of the current Commission's position and an argument for approval based on law:

- I. PROPOSAL FOR A PROSEPECTIVE APPLICATION OF THE CURRENT COMMISSION'S POSITION ON THE DATE OF MAXIMUM MEDICAL IMPROVEMENT AND THE TRANSITION FROM TEMPORARY BENEFITS FOR THE PURPOSE OF CREDITS TO PERMANENT BENEFITS AND TO APPLY THAT SAME DISCRETIONARY POSITION TO FUTURE FEE PETITIONS BASED ON MAXIMUM MEDICAL IMPROVEMENT GOING FORWARD.

The Petitioners would submit that it is the current

practice of the current Commission which is in accord with our Appellate Court Decisions in reference to maximum medical improvement and the transition from temporary benefits to an Award for permanent disability benefits as far as a credit against a permanent Award that all of the Commissioners currently sitting on the Commission apply discretion based on the facts before them as to whether or not they will grant a "credit" and from what date against a permanent Award. This is especially true in circumstances where the Defendants have requested and filed a Form 21 request to stop payment of temporary total disability benefits and the Commissioner has made an Award.

The Petitioners would submit and believe all Commissioners will agree that there are times that the Defendants are given a credit pursuant to case law back to the date of maximum medical improvement. Sometimes depending on the time that the Form 21 is filed the Commissioners exercise discretion and do not give a credit prior to the date that the Form 21 was filed. In addition, the Commissioners exercise their discretion under the facts presented to them and grant no credit at all. Further, in cases where there are multiple dates of maximum medical improvement the Commissioners exercise their discretion, again, under the facts presented to them, to make an Award from the appropriate date under the facts presented back to which the Defendants are entitled to a credit. In all such where there is

a factual basis for the date chosen our Appellate Courts have affirmed the decisions.

In this case, there was a divergence of opinion expressed the Commissioners in the Full Commission Decision with two dissenting opinions which reflected that policy.

The Petitioners would submit that the Commission should grant the Motion for Rehearing, award the attorneys' fees as requested in this case, and apply a prospective application of the current Commission's position on attorney's fees which would allow the Commissioners in each case to review the facts and set a date back to which the attorney's fee petition would be approved. This would allow each individual Commissioner the discretion to review the attorney fee petition in accordance with their view of the facts and applicable date in each individual case. Under that policy each individual Commissioner would exercise his or her discretion when awarding attorney's fees back to the appropriate date under the facts; whether that be at the time of maximum medical improvement, at a transition from temporary to a permanent Award, or from another date based on maximum medical improvement and other factors such as delay or from the date of the Commission Decision, or another appropriate date; supported by the factual situation involved in the case.

The Commission could put out a policy that the Commissioners will exercise same discretion in approving attorney's fees in a running Award situation as they apply to a

credit. This would allow for a prospective application of the current Commission's position as to the permanent Award and a credit and apply the same discretion in approving attorney's fees and at the same time not punish and would allow for the approval of the attorneys' fees as submitted in this case. Petitioners would submit that they variably believe that the Commissioners all understand that this fee petition was submitted under case law, Regulations, and the policy heretofore of the Commission in reference to MMI and the transition from temporary total disability benefits to permanent disability benefits as being the date upon which the permanent "Award" attaches.

II. THE PETITIONERS WOULD SUBMIT THAT THE CURRENT FEE PETITION SHOULD BE APPROVED BY THE FULL COMMISSION AS BEING FILED IN ACCORDANCE WITH THE STATUTORY LAW, REGULATIONS, AND CASE LAW INTERPRETING THE DATE UPON WHICH A PERMANENT AWARD ATTACHES AT WHICH TIME THE ATTORNEY'S FEES ALSO ATTACH.

The Supreme Court and Court of Appeals have held that:

"Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further care or treatment which will lessen the period of impairment." O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 28, 459 S.E.2d 324, 327 (Ct. App. 1995). It is true that when a claimant is receiving temporary benefits, reaches maximum medical improvement and is still disabled temporary benefits are terminated and the claimant is awarded permanent benefits. Smith v. SC Dept. of Mental Health, 335 S.C. 396, 399, 517 S.E.2d 694, 696 (1999). ("The rationale for ceasing temporary benefits upon a finding of MMI is to permit entry of a permanent award...")." Bass v. Kenco Group, 366 S.C. 450, 622 S.E.2d 577 (SC App. 2005). (Emp. add.)

SC Code §42-15-90(A) (B) (1) (a) creates an exception to the sanctity and privity of the contract between an attorney and

their client as parties to the contract and allows and requires that any fee charged by an attorney, claimant or defendant, be approved by the Commission. The sanctity of the attorney's contract and the fee petition and the limitation on the Commission's authority to approve attorney's fees is embodied in SC Code §42-3-185 which requires places procedural requirements on any regulation seeking to implement the provisions of §42-15-90 in reference to the attorney's fees of both the claimant and the defendants. (For purposes of this argument it is assumed that the current Regulation was properly promulgated and received approval by both the Judiciary Committees of the Senate and House of Representatives, and also a Concurrent Resolution of the General Assembly before promulgation under the Administrative Procedure Act which is a mandatory requirement under that Statute for any attorney's fees Regulation to be valid.)

Under its authority the Commission has adopted Regulations for the reporting of attorney's fees and for determining a reasonable fee in accordance with the Supreme Court Disciplinary Rules and pursuant to the Act. Under those Regulations and specifically Regulation 67-1205(C)(2) the Commission has provided that where a claimant is receiving temporary total disability benefits in a case where the attorney then obtains a final "Award" as follows:

"If the attorney secures the payment of permanent disability later, the attorney may charge, according to these Regulations, up to but not more than 33.3% of the settlement or Award."

Under his Award of total and permanent disability to Ms. Cartee, Commissioner McCaskill determined that Ms. Cartee had reached maximum medical improvement on October 12, 2016, and in his Order specifically provided that the total and permanent disability was for the balance of 500 weeks from that date forward which was to be calculated and paid in a lump sum. As noted under both the Commission's Regulations and the Supreme Court and Court of Appeals' decisions, the date of maximum medical improvement is the date upon which any weekly benefits or benefits transition from being the payment of temporary disability benefits to an "Award" of permanent disability benefits. In the case of Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (1999):

"Workers' compensation benefits accrue along a time continuum: temporary total disability (TTD) benefits are available from the date of the injury through the date of maximum medical improvement (MMI), and post-MMI benefits may be awarded either as a permanent, total or partial disability, or as a percentage of impairment to a scheduled member".
(Emp. add.)

Thus under law the permanent "Award" attached as of the date of MMI under Commissioner McCaskill's Order which is the same date when the "Award" of permanent and total disability attached that the attorneys in this case had "secured" for Ms. Cartee. Their attorneys' fees which is limited to 1/3rd of the "Award" was calculated on the basis of the value of the Award of total and

permanent disability benefits that they secured for Ms. Cartee as of that date.

In further support of this position and interpretation, which is clear under law, to entertain any date past that date would create a moving target and would actually pit the attorney against their client because it would create a situation wherein the attorney's fee petition would be ever decreasing and would encourage or place a conflict of interest between the attorney's interest in his attorney's fees and the best interest of the client as to the Award and especially a total and permanent disability award with accompanying lifetime medical benefits.

In addition, it appears to be the Commission's position that the "Award" of the Commission is not final until the final Decision of the Full Commission, which is not true and is totally inaccurate under law. The "Award" is actually not final until a final Decision is entered after an appeal. That can be many, many dates: the date of the Full Commission Decision; the date of a Decision on Reconsideration of the Full Commission decision; the date of the Decision by the SC Court of Appeals (COA); the date of the COA Decision on a Motion for Rehearing; the date that a Petition for a Writ of Certiorari is denied; the date of the Decision by the SC Supreme Court if certiorari is granted; the date of a Decision on Rehearing; or the date that the Remittitur is sent down from the Supreme Court.

In support of this position, SC Code §42-17-60 provides

that after appeal to the Appellate Courts that the defendants have to start paying weekly payments of compensation towards the "Award" but it also provides that interest accrues on any unpaid portion of the "Award" during the pendency of the appeal, in other words back to the original date of the Award. There have been numerous cases decided under SC Code §42-17-60 and most those are specifically reviewed in the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960). In Case and the decisions its reviews, the Award attaches from the original date of the Award by the Commission backdated to the date that the Award starts from or in other words, from the first payment of weekly compensation under an Award of the Commission forward. Whether it is an Award made by a Hearing Commissioner and not appealed or where it is appealed to the Full Commission, and is affirmed at that level, the Award starts from and dates back to the original date of the Award. If it is appealed to the Appellate Courts it still dates back to the original date of the Award or if there is an Award denied by the Hearing Commissioner and then awarded at the Full Commission it dates back to the date that the Full Commission says that the Award was to start.

Next, the Petitioners variably believe that the Commissioners upon reflection will remember that at least five (5) members of the current Commission have approved attorney's fees back dated to or from the date of maximum medical improvement. Specifically, Petitioner McDaniel would submit that

attorney's fees backdated to the date of maximum medical improvement have been approved by Commissioner James, Commissioner Campbell, Commissioner Barden, Commissioner McCaskill and Commissioner Wilkerson. (Because of sanctity, privacy of records, attorney/client, and limited exception to approve, Counsel will be glad to discuss the individual claims referenced with any of the named Commissioners assigned to approve the attorneys' fees in those claims should they not remember or disagree. Generically: Deli Manager, Deputy Sheriff, State Investigator, Call Center Manager, Truck Driver.)

Finally, the Fee Petition in this matter was submitted, the Petitioners would submit, under the long-standing interpretation of the Regulations and Statute and based on the past experience of Counsel with the Commission and with at least five (5) of the current sitting Commissioners in reference to the attorney's fees that were requested. If the Commission can submit or would be willing to provide any information that any petition submitted by Petitioner McDaniel prior to the date of this submission was ever denied in reference to a request for attorney's fees from the date of the Award forward, the Petitioners would humbly and most respectfully love to have that produced.

The Petitioners have absolutely no desire nor is it in their best interest to be at odds with the Commission and humbly believe that their fee petition was submitted in accordance with

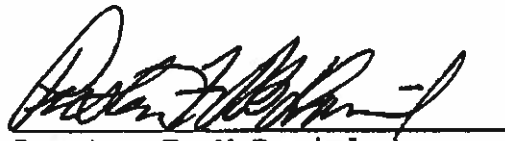
the law and in accord with the Supreme Court and Court of Appeals' decisions, the Commission Regulations, and the long-standing policies as to attorney's fees of the Commission.

While not directly related to the argument, the Petitioners would also point out that Ms. Cartee has advised this Commission by letter that she was fully explained the fees in this case and only wished that she could pay the Petitioners more for what they had done for her. Also, the Petitioners after their involvement increased the Claimant's compensation rate from \$514.39 to \$698.41, a difference of \$184.02, thus resulting in a benefit to Ms. Cartee over the life of the claim and the Award of \$92,010.00, almost \$20,000.00 more than the fee requested.

Wherefore for the foregoing reasons the Petitioners would seek rehearing and reconsideration of the fee petition submitted, which was submitted in accordance with law and Regulation and the long-standing interpretation and policy of the Commission in approving attorney's fees from the date of the Award of permanency; and/or that the Commission apply its new policy or the current Commission's current interpretation in a prospective manner such that each Commissioner reviewing a future fee petition will have the discretion to make an Award of attorney's fees in accordance with their view of the facts and circumstances that exist at that time in that case and award the attorneys' fees requested in this case on the basis that they were submitted prior to the knowledge of any change in the

policy of the Commission in reference to attorney's fees and also based on the historical knowledge of the Petitioners in reference to attorney's fees that had been approved in the past including and by Commissioner McCaskill, Commissioner Wilkerson, Commissioner Barden, Commissioner James and Commissioner Campbell, and the Claimant variably believes also Commissioner Beck and Commissioner Taylor.

Respectfully and humbly submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

On Behalf of Preston F. McDaniel
and John Milling, Petitioners

June 10, 2022

**DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO.: 1307922

Pamela O. Carter,

Claimant,

v.

S.C. Judicial Department,

Employer,

&

State Accident Fund

Carrier,

**Hearing held in Richland County,
South Carolina on May 21st, 2018.**

Appearances: Mr. Preston F. McDaniel, on his own behalf.
No appearance was made by the Claimant.
No appearance was made by Defendants.

Purpose of Hearing: To resolve the dispute of Attorney Fees and Costs.

Filed: June 6, 2022



STATEMENT OF THE CASE

This matter comes before the Workers' Compensation Commission on appeal from a Decision and Order of the single Commissioner dated March 6th, 2018, denying the Petition for Additional Attorneys' Fees requested by Claimant's attorney, Preston McDaniel ("Counsel") on his Form 61. The purpose of this Hearing is to determine an appropriate award of attorneys' fees. The merits of the underlying claim were decided by Decision and Order of the Appellate Panel dated October 17th, 2017.

ORDER OF THE SINGLE COMMISSIONER

On March 6th, 2018, the single Commissioner made the following Findings of Fact and Rulings of Law:

1. The question at bar is whether Claimant's Counsel is entitled to additional requested attorney's fees.
2. Determination of this question rests in the plain reading of Regulation 67-1205(c)(2) which reads in part, "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."
3. I cannot find any persuasive authority for an award beyond that amount. I awarded the Claimant permanent and total disability on 04/13/17. While that award was on appeal, the case was not final and, as such, it would be premature to determine an award. Additionally, while on appeal, that Order could have been awarded to a greater award or a lesser award. The Full Commission could have vacated my Order and remanded the case for a hearing de novo. The determination of the award with finality could not be reached until my Order became the law of the case.
4. Once my order was the law of the case, The Defendants then paid the Claimant the commuted value of the award - \$179,077.14. The Form 19 reflects this payment. Based on the payment, Claimant's counsel is entitled to an attorney's fee of 33.3% of that amount which is \$59,632.69. I have previously ordered payment of that amount. I cannot find and counsel has not submitted any authority which supplants Regulation 67-1205(c)(2). As such, the payment of any additional attorney's fees must be consistent with 67-1205(c)(2).

Therefore, the petition for additional attorney's fees is denied.

DECISION OF THE COMMISSION

Based on our review of the record and consideration of the position of Counsel, we make the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. Counsel first secured compensation payable to the Claimant in the form of a lump sum payment of back-owed Temporary Total Disability by Order dated July 28th, 2016. Counsel secured the payment of compensation in the amount of \$29,600.93. On September 12th, 2016, the Commission awarded contingency attorneys' fees to Counsel in the amount of \$9,866.98, to be withheld from the amount awarded to Claimant in accordance with Reg. 67-1205(C)(2).
2. Counsel continued to represent Claimant. On April 17th, 2017 the single Commissioner awarded Claimant permanent and total disability benefits under § 42-9-10 and lifetime medical care under § 42-15-60. Defendants appealed the award to the Commission. While on appeal, Claimant remained on a running award of weekly total disability benefits. On October 17th, 2017, the Appellate Panel fully affirmed the award of the single Commissioner. Defendants did not seek an appeal of the award in accordance with § 42-17-60, and the award of the Full Commission became the law of the case on or about November 16th, 2017.
3. On or about December 13th, 2017, Defendants filed a WCC Form 19 with the Commission, showing that it had paid the award to Claimant in a lump sum in the amount of \$179,077.14. The Form 19 showed that Claimant had received 230 weeks of total disability benefits, paid weekly, that terminated on December 1st, 2017. The \$179,077.14 payment represented the commuted value, calculated in accordance with Reg. 67-1605, of the remaining weeks of total disability under § 42-9-10 that were due and payable at the time the award of the Full Commission became final.
4. On December 8th, 2017, Counsel filed a Form 61 attorney fee petition, asking for the Commission to award him a second contingency fee in the amount of \$73,094.45. According to the disbursement statement provided by Counsel, this amount was to be

withheld from the \$179,077.14 awarded to Claimant, purportedly pursuant to Reg. 67-1205(C)(2). \$73,094.45 represents 40.82% of \$179,077.14. Counsel asserts he is entitled to an award of attorneys' fees of 33.3% of all benefits paid to Claimant post-maximum medical improvement.

5. On January 9th, 2018, the single Commissioner sent an email to Counsel stating the following

I have reviewed your fee petition in Pamela Cartee v. SC Judicial Department several times. I have also reviewed the law I believe to be applicable. I can only find justification for a fee of \$59,632.69. If you wish to amend your Form 61 to reflect this amount as your fee, I will approve the fee petition. Otherwise, I am glad to set the matter for a hearing pursuant to the Act. I am happy to hear your position.

6. On January 8th or 9th 2018, Counsel sent a letter to the single Commissioner wherein he averred that he had come in person to the Commission three times without notice in an attempt to initiate communication with the Commissioner regarding the Petition for Attorneys' Fees currently pending before the Commissioner for adjudication. The single Commissioner declined to communicate with him about the matter under review.
7. On January 17th, 2018, the single Commissioner issued a Hearing Notice, setting the matter for the next available date, which was February 12th, 2018.
8. The Hearing was conducted on February 12th, 2018. Counsel was given the opportunity to submit evidence and argue his position.
9. On February 21st, 2018, the single Commissioner issued an Interim Order approving disbursement to Counsel of the amount of fees not in dispute.
10. On February 21st, 2018, Counsel sent a letter to the single Commissioner threatening to "take this matter up with the Supreme Court".
11. On February 22nd, 2018, Counsel sent a letter to the single Commissioner stating that he would hold off on filing anything with the courts if the Commissioner would engage in communication with him about the matter under review.
12. On March 2nd, 2018, Counsel sent a revised Form 61 that changed the amount of the final award listed from the total amount of all benefits, both temporary and permanent, paid, to only the amount of benefits paid post-MMI, but asked for the same amount, \$73,094.45, to be awarded as attorneys' fees.

13. On March 6th, 2018, the single Commissioner issued his Decision and Order Denying the Petition for Additional Attorneys' Fees.
14. On March 7th, 2018, Counsel sent a letter to the single Commissioner reiterating his threat to file litigation with the courts.
15. On March 13th, 2018, Counsel sent a letter to the Commission's Judicial Director, asking her for legal advice.
16. On March 15th, 2018, the Commission's Judicial Director sent an email to Counsel stating "If you file a WCC Form 30 appealing an award of attorneys' fees, the Commission will set the matter for a Hearing in accordance with Section 42-17-50. All parties of record, and the Claimant individually, should be served with any appellate documents."
17. On March 20th, 2018, Counsel filed a WCC Form 30 Request for Full Commission Review, raising seven grounds for appeal.
18. In accordance with longstanding Commission policy, the single Commissioner requested that the appeal be heard En Banc in accordance with Reg. 67-709(B)(1), since the appeal involved novel issues of law and regarded attorneys' fees.
19. On March 23rd, 2018, Counsel sent an email to Commission's General Counsel asking for a legal opinion, and again threatening civil litigation.
20. On April 19th, 2018, Counsel served the Commission with a Temporary Restraining Order Issued Without Notice Pursuant to Rule 65(B), SCRCP, restraining the Commission from taking further action on the Appeal filed by Counsel, that was issued by the Court of Common Pleas for the 4th Judicial Circuit. Despite the prohibition by the court on the Commission taking any action on the Appeal, Counsel filed a Brief of Appellant on April 22nd, 2018.
21. Also on April 19th, 2018, Counsel served the Commission with a Summons and Complaint, listing Counsel in his personal capacity as the Plaintiff and the Commission as Defendants. That matter was referred to the South Carolina Attorney General's Office for defense, and, as of the date of this Decision and Order, is currently pending before the Court of Common Pleas for the 4th Judicial Circuit on Defendant's Motion to Dismiss.
22. On April 27th, 2018, the Temporary Restraining Order expired pursuant to its terms and has not been extended. The Commission is unaware at the time of drafting of any legal prohibition on its issuance of this Decision and Order.

CONCLUSIONS OF LAW

1. Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission. S.C. Code Ann. § 42-15-90 (1976).
2. Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly. S.C. Code Ann. § 42-3-185 (1976).
3. Pursuant to 42-1-100 "compensation" is the money allowance *payable* to an employee or to his dependents.
4. Pursuant to Regulation 67-1205(B) "If the parties agree to a contingent fee contract, the fee is deemed reasonable when the following requirements are met and the requested fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee." S.C. Code Regs. 67-1205(B).
5. The Act requires that "as used in this Title, unless the context otherwise requires, the terms dealt with in §§ 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections." S.C. Code Ann. § 42-1-20.
6. The first sentence of R.67-1205(C) states that "[a]n attorney may charge up to, but not more than, 33.3% of the total amount of *compensation*, except in the following situations, where the attorney shall set the fee as instructed." Reg. 67-1205(C) (Emphasis added).
7. "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439,445 (2009). "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*¹

¹ The abuse of discretion standard is the standard of review to be followed by the courts on appeal; it is not the standard followed by the Commission in this review. The standard of review on Review and Rehearing by the Commission is set forth in § 42-17-50, which is the standard of review applied by the majority in this decision.

8. The single Commissioner held "The determination of the award with finality could not be reached until my order became the law of the case." We concur. This is a Conclusion of Law that the single Commissioner made, as he is authorized to do under § 1-23-350. The amount of compensation that is to be awarded cannot be determined until the Decision and Order making that award is final.

9. In a footnote to its Decision, the South Carolina Court of Appeals held

Essentially, worker's compensation benefits accrue along a time continuum: TTD benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. See S.C.Code Ann. §§ 42-9-10, -20, -30 (1976); S.C.Code Ann. § 42-9-260 (1996); 25A S.C.Code Ann.Reg. 67-507 (1990) (repealed by 21 S.C.Reg., No. 6, Part 2 at 439, effective June 27, 1997); *O'Banner v. Westinghouse*, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (Ct.App.1995). To require an employer to prove a claimant's disability ended before terminating TTD benefits dilutes the distinction between temporary and permanent disability payments, and it dilutes MMI as the definitive moment when a transition between the two different types of payments is accomplished.

Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999).

10. The language cited from *Hendricks*, above, makes it clear that we cannot award attorneys' fees in the manner requested by Counsel. Post-MMI benefits may be awarded as permanent disability benefits. However, Credit paid to the Employer/Carrier for benefits overpaid is not money allowance payable as described in section 42-1-100, and any funds allocated from the award for the payment of such credit may not be reduced to collect attorneys' fees. The footnote Counsel relies upon was favorably cited by our Supreme Court in *Curtel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2006). *Curtel* involved a dispute over the Commissioner's findings regarding maximum medical improvement and temporary total disability. *Curtel v. Environmental Management Services*, 376 S.C. 23, 30, 655 S.E.2d 482, 486 (2006). Neither *Hendricks* nor *Curtel* involved a dispute over an award of attorneys' fees. In the present case, we are not concerned with whether the benefits paid to Claimant post-MMI were temporary or permanent disability benefits. Our concern is that it is not appropriate to allow an attorney to take back benefits that have already been paid to a Claimant to satisfy an attorney's fee. *Hendricks* and *Curtel* do not provide guidance on this issue.

11. Once a Claimant has begun receiving weekly payment of disability for more than 150 days, Defendants cannot terminate payment of those benefits without an order of the Commission. S.C. Code Ann. § 42-9-260 (1976). This is true whether the weekly payments represent temporary or permanent disability benefits. The Act recognizes the hardship that would be placed on a Claimant if she were to lose the weekly disability payments she was receiving prior to an award of permanent disability benefits being finalized. While the award of permanent disability benefits is pending on appeal, Claimant is not secure in her award of permanent disability benefits. Her weekly payment of disability benefits are her only source of living wages prior to the appeal being finalized. It would be unconscionable to require Claimants to pay to their attorneys the weekly benefits they were receiving before the attorney had successfully defended an appeal. Further, such a result is not permitted by the provisions of law that, unlike *Curtiel* and *Hendricks*, deal directly with attorneys' fees.
12. Reg. 67-1205(C)(2) does not entitle Counsel to 33.3% of all benefits paid to Claimant post-MMI; it entitles him to 33.3% of the "settlement or award". The award was not finalized until the time for appeal of the Full Commission's Decision and Order had run pursuant to § 42-17-60. The amount awarded at the time the award became final, \$179,077.14, is the amount of compensation from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.²
13. "Compensation" means "the money allowance payable to an employee . . ." S.C. Code Ann. § 42-1-100. (Emphasis added). The use of the adjective "payable" to modify "money allowance" limits the definition of "compensation" as used in Reg. 67-1205 to include only "money allowance" that is "payable", and not "money allowance" that has already been "paid" in the past.³

² The Majority disagrees with the Dissent that the "award" became finalized on the date the Full Commission issued its Decision and Order, October 17th, 2017, and that any benefits paid subsequent to this date are subject to be reduced to pay attorneys' fees. Workers' Compensation is unique in that certain circumstances, present in this case, allow a Claimant to be on a running award of weekly benefits while a decision and appeal are pending. It is the Majority's position that the benefits paid weekly to Claimant while the time for appeal had not been exhausted were still not "secure". The Full Commission's Decision and Order did not become the law of the case until the time for appeal had been exhausted. It was not until the Decision and Order became the law of the case that Defendants paid the full award and could properly terminate weekly payments of compensation, thus finalizing the award.

³ The Dissent raises the concern that our analysis overly narrows the definition and application of "compensation" in a manner that could impact our interpretation of this term as it is used in other parts of the Act. We are only analyzing

14. Counsel would have us award attorneys' fees from the "money allowance" that has already been "paid" to the Claimant. We decline to adopt this interpretation. Doing so would create the absurd result where an attorney could force his own client to pay back to the attorney weekly benefits the Claimant had already received. In this particular instance, the amount of permanent disability benefits awarded in the lump sum exceeded the amount of weekly benefits Claimant received from the date of MMI through the date the award was finalized. However, it is possible for the number of weeks in which a Claimant is receiving weekly benefits while the matter is pending on appeal to exceed the number of weeks awarded as permanent disability. Were we to adopt Counsel's position that all compensation paid post-MMI is subject to attorneys' fees, this would create instances where a Claimant would owe her attorney a portion of the benefits already "paid" to her, thus rendering the Claimant a debtor and her attorney her creditor. We hold that such an interpretation is not consistent with Reg. 67-1205 or the purpose of the Workers' Compensation Act. *See Coksley v. Robert Lee, Inc.*, 197 S.C. 157, 14 S.E.2d 889, 893-4 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results.")

15. Reg. 67-1205(C)(2) provides "If the attorney *secures* the payment of permanent disability later, the attorney may charge up to, but not more than 33.3% of the *settlement or award*." Subsection (C)(2) does not entitle Counsel to 33.3% of the "permanent disability", it entitles him to 33.3% of the "award". In order for an attorney to be entitled to a contingency fee under subsection (C)(2), he must "secure" the payment of the compensation. The award of compensation was not "secure" until the attorney successfully defended the award to

"compensation" as it is used in Reg. 67-1205(C)(2) for the purposes of determining an award of attorney's fees. The term as it is used elsewhere in the Act will be analyzed as the context requires, consistent with § 42-1-20.

finality. At the time the award became final, the Defendants paid the commuted value of the outstanding benefits in the amount of \$179,077.14. It is this amount from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.

16. While Counsel advocates that Reg. 67-1205 entitles him to an award of attorneys' fees of 33.3% of the value of the permanent and total disability award at the time Claimant reaches MMI, we hold that Reg. 67-1205 only allows an award of attorneys' fees of 33.3% of the value of the permanent and total disability award remaining at the time the attorney "secures the payment of compensation."
17. We cannot apply Reg. 67-1205 in the strained manner advocated by Counsel. Reg. 67-1205 does not state that an attorney is entitled to 33.3% of the "permanent disability", it states the attorney is entitled to 33.3% of the "settlement or award".
18. "In doubtful cases, the application of these regulation shall be in favor of the injured employee." S.C. Code Ann. Regs. 67-201(B) (2014 Supp.) Should a court construe any terms in Reg. 67-1205 as doubtful, we find it is objectively in Claimant's favor to have the amount in dispute paid to her instead of her lawyer. Her lawyer has already collected \$69,499.57, and continues to practice law. Claimant, meanwhile, is permanently and totally disabled, and the balance of the award is all the money that can be provided by the Act for her to live on for the rest of her life.
19. The record is devoid of any evidence showing Commission policy is to award an attorney 33.3% of all post-MMI benefits when the Claimant continues to receive weekly benefits before the award is finalized. Counsel has the burden of proving he is entitled to the fee he is requesting. It is not the Commission's policy to grant a contingency fee to be deducted from all benefits paid post-MMI without taking into consideration when the award becomes final and when payment of the compensation is secured by the attorney's representation.
20. The Commission is prohibited by law from making any change to its policies or procedures regarding the approval of attorneys' fees without approval of the General Assembly. See S.C. Code Ann. § 42-3-185. If Counsel wants the policy changed to allow attorneys' fees to be deducted from all benefits paid post-MMI, he must secure such a change through the General Assembly.

21. The General Assembly gave sole authority to approve fees for attorneys to the Commission. See S.C. Code Ann. § 42-15-90. Section 42-15-90 reads, in pertinent part, "Attorney fees . . . for services under this title are subject to the approval of the commission" Section 42-15-90 must be read in context with § 42-3-185. Section 42-3-185 provides

Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly.

S.C. Code Ann. § 42-3-185 (1976, as amended).

It is clear from the two statutes, read together, that it is the intent of the General Assembly that changes in the manner in which the Commission approves attorneys' fees must be done with approval by the General Assembly in the method prescribed.

22. There is sound reasoning behind the General Assembly's decision to allow limitations not present in tort cases on the amount of the injured worker's benefits that could be taken to pay attorneys' fees. Benefits available under the Workers' Compensation Act are limited to those expressly provided in the Act. Remedies available at common law such as general damages, pain and suffering, loss of consortium, punitive damages, etc., are not available to the workers' compensation claimant. Thus a limitation on attorneys' fees is appropriate. The South Carolina Attorney General has long been of the opinion that § 42-15-90 protects society "from the wrongs to injured employees and their dependents that would likely follow if some restrictions were not placed on the costs of legal services rendered injured workers in the prosecution of their claims for compensation". S.C. Op. Atty. Gen. 185 (1986).

23. "The principal purpose of [§ 42-15-90] is to protect the workman from the charging of excessive fees". See S.C. Op. Atty. Gen. 185 (1986), citing 1936-37 S.C. Op. Atty. Gen., p. 299.

24. The requested fee in this particular case is unreasonable under Rule 1.5 of the South Carolina Rules of Professional Conduct. The Commission requires that requested attorneys' fees comply with the South Carolina Supreme Court Disciplinary Rules on

determining a reasonable fee. See S.C. Code Ann. Regs. 67-1205(A) and (B). Rule 1.5(a)(3) of the Rules of Professional Conduct and *Glasscock v. Glasscock* require when considering approval of an attorney's fee for the tribunal to consider "customary legal fees for similar service" and "the fee customarily charged in the locality for similar legal service". Counsel has not entered into the record or cited one single example of a fee similar to the one in which he is requesting having ever been awarded by the Commission. As such, we find his request is not for "customary legal fees for similar service".

25. Counsel asserts that it was somehow improper for the Commission to notice certain parties of the Hearings in this matter. We find no error, as Commission Hearings are open to the public in accordance with § 42-3-170. Defendants are clearly a party to the underlying claim.
26. Counsel implies that the single Commissioner somehow acted improperly by consulting with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities. First, we hold that the record is devoid of any evidence that the single Commissioner did so in this instance. Second, we hold that, had the single Commissioner consulted with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities, such action would have been wholly proper, as it is expressly permitted by the Code of Judicial Conduct. See Canon(3)(B)(7)(c), CJC, Rule 501 SCACR.
27. Counsel asserts that the single Commissioner did not handle his fee petition in a timely manner consistent with Reg. 67-1204(F) by not "immediately" scheduling a hearing. The single Commissioner found that the Form 61 did not comply with Reg. 67-1205 on January 9th, 2018. The Hearing Notice was issued eight days later on January 17th, 2018, the Hearing was held on February 12th, 2018, and the decision of the single Commissioner was issued on March 6th, 2018. We do not see how the single Commissioner could have disposed of the matter in a timelier manner, and hold that the single Commissioner fully and timely complied with the provisions of Reg. 67-1204(F).
28. We hold that Counsel has received adequate remuneration for his services in this case. Counsel was retained in April of 2014 and the award became final in November of 2017. On September 12th, 2016, he received \$9,866.88, and this Decision and Order awards him an additional \$59,632.69, for a total of \$69,499.57.

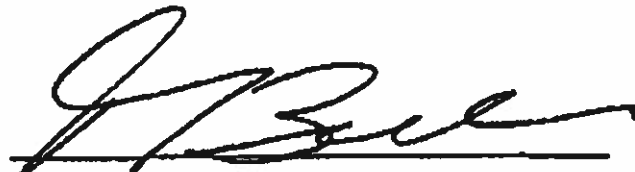
29. In Counsel's correspondence, briefs, and oral statements, Counsel repeatedly refers to the single Commissioner as a "lay commissioner." We find as a fact and rule as a matter of law that the Honorable H. Gene McCaskill is a Workers' Compensation Commissioner appointed and qualified in accordance with § 42-3-20. The Honorable H. Gene McCaskill has been appointed as a Workers' Compensation Commissioner on three occasions by two different Governors, and has been approved unanimously by the Senate on all three occasions. The Honorable H. Gene McCaskill is fully and lawfully qualified, competent, and capable of serving as a Workers' Compensation Commissioner.

ORDER

IT IS ORDERED that Counsel's request for attorneys' fees above and beyond \$59,632.69 is **DENIED**.

IT IS ORDERED that Counsel shall certify in writing to the Commission that he has paid \$13,461.76 to Claimant within thirty (30) days of the date of this Order.

IT IS SO ORDERED!



Commissioner T. Scott Beck, Chairman



Commissioner Avery B. Wilkerson, Jr.



Commissioner Susan S. Barden



Commissioner R. Michael Campbell, II

CONCURRING IN PART AND DISSENTING IN PART

We concur in part with the majority opinion and would affirm the Single Commissioner's finding that Claimant's award of benefits could not be determined with finality until the date of the Full Commission's Decision and Order on October 17, 2017, when the award became the law of the case. We respectfully dissent from the majority opinion and would reverse the Order of the Single Commissioner in this case on the issue of whether the attorney fees at issue are calculated from the date that the appeal time ran on the Full Commission Decision and Order and the commuted value of the remaining benefits were paid in a lump sum. We find that the attorney's fees in this particular matter are instead calculated from the date of the final order of the

Commission, which is the Full Commission Decision and Order dated October 17, 2017. We base our opinion on the following analysis below.

Supporting case law holds that, essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. *Smith v. NCCI, Inc.*, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006); *Curtis v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d. 482 (2007). Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits. Maximum medical improvement terminating right to temporary total disability benefits is a factual determination by the Workers Compensation Commission. *Id.*

In this case, MMI was a controverted issue and the Single Commissioner's determination of MMI on October 17, 2016 signaled the end of Claimant's temporary benefits. While Claimant continued to receive weekly total disability benefits after the date maximum medical improvement as determined by the Single Commissioner. Claimant's determination of total and permanent disability was not awarded until October 17, 2017, the date of the Full Commission Decision and Order.

Counsel's argument that the date for the calculation of his attorney's fee award should be the date of maximum medical improvement, October 12, 2016, fails. In this case, Counsel had previously secured additional payment of temporary compensation for his client on a Form 15. Regulation 67-1205(c)(2) states, "If the attorney secures the payment of permanent disability later, the attorney may charge...up to but not more than 33.3% of the settlement or award."

The definition of award is set forth in Black's Law Dictionary. An award is "[a] final judgment or decision." The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989); *see also Haxit v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 407 (1991).

S.C. Code Ann. Section 42-17-50 provides for an "application for review" of a single commissioner's decision. Pursuant to the statute governing review, the Full Commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and if proper, amend the award. *Id.* The Full

Commission shall weigh the evidence as presented at the initial hearing and, if good grounds are shown, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *Pack v. State Dept. Of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009). Although it is logical for the Full Commission to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992); see also *Brayboy v. Clark Heating Co.*, 306 S.C. 56, 409 S.E.2d 767 (1991) (Full Commission may review an award of a single commissioner and make its own findings of fact and conclusions of law).

We find Counsel is entitled to attorney's fees as of October 17, 2017, the date of the Full Commission Decision and Order and is not subject to the 30 day appeal period. S.C. Code Ann. Section 42-17-60 states, "an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award ..., may appeal from the decision of the commission to the court of appeals." Section 42-17-50 goes on to state, "In case of an appeal from the decision of the commission on questions of law, the appeal does not act as a supersedeas and, after that time, the employer is required to make weekly payments of compensation... ." The thirty-day supersedeas provision of this section should be construed as requiring weekly payments provided for in the award of the Commission to continue pending determination of the employer's appeal. *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 115 S.E.2d 57 (1960). The legislature intended that weekly payments ordered in an award are to be made until the question at issue is fully determined upon appeal. *Bagwell v. Ernest Burrell, Inc.*, 227 S.C. 168, 87 S.E.2d 583 (1955).

In the present case, there was no appeal from the Decision and Order of the Commission granting Claimant permanent and total disability benefits. As such, the issue of whether or not there was a thirty (30) day supersedeas pending outcome of an appeal is moot. As there was no appeal from the Full Commission Decision and Order, the Findings of Fact and Conclusions of Law of the Full Commission were final and "fully determined" as of the date of the Full Commission Order on October 17, 2017. An award of the Commission is not effectuated until the final Decision and Order of the Full Commission is entered. In this particular matter, Counsel's attorney's fees should be calculated as of the date of the Commission's final Order.

"Every state has some type of provision for subjecting the claimants' attorneys' fees to the supervision of a commission or court handling compensation administration." Lex K. Larson, *Larson's Workers' Compensation* § 133.01(1) (Matthew Bender, Rev. Ed.) Attorney's fees in South Carolina are "subject to the approval of the Commission." S.C. Code Section 42-15-90. The South Carolina Legislature has directed the Commission to supervise both medical payments and attorney's fees. In addition, the Workers' Compensation Commission has promulgated Regs. 67-1204 and 1205 in governing supervision of attorney's fees.

Regulation 67-1205(c) is applicable to this case and states an attorney may charge up to 33.3% of the total amount of compensation. As noted in the majority opinion, the definition of compensation includes the word "payable". The majority interprets this definition to limit the term "compensation" to only those payments that have not yet been paid. This interpretation strictly narrows the definition and practical application as to what compensation is. We find the term "payable" in the definition of compensation is broad and applies to any and all payments that were "payable" at their inception, even if at the time of the award some had already been paid.

We also look to case law governing statutory construction to define the term compensation as defined in S.C. Code Ann. Section 42-1-100. Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). Should compensation only be that payable in the future, it would change the characterization of payments of compensation that have already been paid, essentially creating a third class of compensation payments. There would be temporary compensation, permanent compensation previously paid, and permanent compensation to be paid in the future. There is no statutory or case law authority for such a designation. An example of a statute that could not be reconciled under the majority's interpretation is found in Section 42-9-10. This section provides that in no case may the period covered by the compensation exceed five hundred (500) hundred weeks (with exception). If compensation payments are only compensation when they are payable in the future, then the period of compensation under this statute would be indefinite. In addition WCC Forms 18 and 19 designate and report permanent compensation paid, not compensation payable in the future.

As noted above, the statutes governing review of a Single Commissioner's decision places the Full Commission in the same posture as the Single Commissioner for purposes of the review. The Full Commission is the ultimate fact finder. As such, any finding as to whether the Single

Commissioner abused his discretion would not be the applicable standard for the Full Commission, but rather the Court of Appeals or a higher court. *See Kiriakides v. School Dist. of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). As the ultimate finders of fact, the Full Commission must analyze the application of the traditional factors of review of an attorney's fee award.

The factors that should be reviewed in determining a reasonable attorney's fee in any matter are: (1) The nature, extent, and difficulty of the case; (2) The time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991).

With regard to the first *Glasscock* factor, the nature, extent and difficulty of the case, this case involved the pursuit and obtainment of a finding of "permanent and total disability." This is the maximum benefit that can be obtained in a workers' compensation matter, except for matters involving catastrophic injuries such as severe brain damage. In addition, the contested issues included whether Claimant was at maximum medical improvement and whether she was entitled to lifetime medical treatment despite competing medical opinions. Although the Record does not indicate the presentation of any novel issues, the parties' APA Submissions totaled 249 pages in addition to the deposition transcripts of Dr. Lembo and Dr. Healy.

As to the second *Glasscock* factor regarding time, Workers' Compensation attorneys are traditionally engaged with contingency contracts that are subject to Commission approval, so the factor of the number of hours expended by an attorney is not usually directly considered by the Commission. However, it may be relevant in the aspect of considering the complexity of a matter. Counsel cites in his Form 61A that he has hundreds of hours in this case. It is unknown how many hours may have been performed by Counsel for the increase in temporary compensation. It is noted that Counsel previously obtained a tangible result for the Claimant in increasing her compensation rate; a fee has already been approved by order of the Commission for that pursuit. It was calculated from the back payment of the increase in award. As indicated herein, future payments of temporary total are not subject to an award of attorney's fees by custom which is codified in Regulation 67-1205.

As to professional standing and experience of counsel, the third *Glasscock* factor, Counsel (McDaniel) regularly appears before the Workers' Compensation Commission exclusively

representing injured workers. His Form 61A filed with the Commission indicates that he has been practicing for over 41 years.

This matter involves that of a contingency contract as outlined in *Glasscock* factor number four. This is the method of payment customarily and traditionally before the Commission.

The determining factors in this matter involve what beneficial results were obtained and what is the customary legal fees/calculation applied by the Commission, which are the fifth and sixth *Glasscock* factors. The benefit obtained in this matter was not secured until the final award of the Commission. The award of attorney's fees is customarily calculated from the amounts that are secured by counsel in a case pursuant to an award. In most circumstances, including the facts of this underlying claim, amounts from a running award of weekly payments are not customarily subject to attorney's fees, as they are automated. The pivotal issue in the workers compensation award of attorney fees is what is customary. No matter what the characterization of the compensation is, temporary or permanent, the fees are granted to the amount of the award that is obtained by the efforts of the attorney. Attorney's fees are not traditionally granted to an amount based on a running award under the facts of this case. The Regulations cite specific situations in which the Commission notes that fees are not payable on a running award. For example, an award of attorney's fees are not made on continuing temporary total benefits or where a Claimant's attorney has defeated the termination of a running award. In this case, a fee was allowed on back temporary total disability benefits as the Claimant's attorney successfully obtained a beneficial increase; but, although the attorney obtained the increased, running award for the Claimant, he is not entitled to a fee of the continuing temporary compensation. This particular custom is cited within Regulation 67-1205(c)(2), itself. Again, R. 67-1205(c)(2) allows a fee of 33.3% of a later award or settlement. In this case, the benefit was not obtained until Counsel effectuated and secured the final award as stated above.

We find that due to the factors reviewed that the award of attorney's fees in this matter should be calculated as 33.3% of the amount awarded to Claimant as of the date of the final award of the Commission, which is the Full Commission Decision and Order dated October 17, 2017. For the reasons as set forth above, we would affirm in part and reverse in part the Order of the Single Commissioner.



Commissioner Melody L. James



Commissioner Aisha Taylor

Order Served via USPS:

<p>Preston F. McDaniel McDaniel Law Firm 1315 Elmwood Ave Columbia, SC 29201</p> <p>John M. Milling Attorney at Law P.O. Box 519 Darlington, SC 29532</p>	<p>Pamela O. Cartee 1825 Woodbine Drive Hartsville, SC 29550</p>
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 6, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1307922

EX-PARTE PRESTON F. MCDANIEL)
& JOHN M. MILLING, ATTORNEYS)
AT LAW, IN RE: FEE PETITION)
FILED IN WCC FILE NO. 1307922,)

Petitioners.)

IN RE:)

PAMELA O. CARTEE,)

Employee-Claimant,)

v.)

S.C. JUDICIAL DEPARTMENT,)

as Employer, and)

STATE ACCIDENT FUND,)

as Carrier,)

Defendants.)

CERTIFICATE OF SERVICE BY
MAIL


I hereby certify that on the 10th of June 2022 in the matter of Ex-Parte Preston F. McDaniel and John M. Milling, Attorneys at Law, in Re: Fee Petition Filed in WCC File No. 1307922, that the original and copy of **PETITIONERS MOTION FOR REHEARING OF THE EN BANC DECISION OF THE WORKERS COMPENSATION COMMISSION IN REFERENCE TO ATTORNEY FEE PETITION FILED IN SC WCC FILE NO. 1307922 RE-FILED AND SERVED BY REGULAR MAIL ON JUNE 6, 2022**, was served by depositing the same in the United States Mail with adequate postage thereon, addressed as follows:

Original Motion:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202; and

Copy of the Motion:

Pamela C. Cartee
1825 Woodvine Drive
Hartsville, SC 29550



Preston F. McDaniel

SWORN TO BEFORE ME this

14 day of JUNE, 2022

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/4/24

Exhibit 22

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1307922

PAMELA CARTEE)	
)	
Claimant,)	MOTION ORDER
)	
v.)	
S.C. JUDICIAL DEPARTMENT)	
)	
Employer, and)	
)	
STATE ACCIDENT FUND)	
)	
Carrier,)	
)	
Defendants.)	
)	

This matter came before the Commission on September 19, 2022 on Counsel/ Appellant's Motion for Rehearing. For the reasons stated herein, the Motion is denied.

FINDINGS OF FACT

1. This matter arose out of a claim for an alleged repetitive trauma injury to the bilateral hands, injury to the cervical spine, and psychological overlay caused by Ms. Cartee's employment as a court reporter for the South Carolina Judicial Department.
2. On April 13, 2017, the Single Commissioner found that Ms. Cartee reached maximum medical improvement on October 12, 2016 and awarded permanent and total disability benefits payable in a lump sum and lifetime, causally related medical treatment.
3. Both parties appealed the decision to the Appellate Panel, which ultimately affirmed the Single Commissioner's benefits award on October 17, 2017.
4. During the pendency of the appeal, Defendants continued to make weekly compensation payments to Claimant pursuant to the Act until approximately December 11, 2017 when they submitted a Form 19 indicating that payment, representing the commuted value of the remaining 500 weeks of Claimant's April 13, 2017 award, had been made in the lump sum amount of \$179,077.14.

5. Thereafter, Claimant's Counsel filed the attorney fee petition that is the subject of this litigation. The petition listed the total amount of compensation paid to Claimant including sums paid as weekly payments during the pendency of the parties cross-appeal on the merits (\$339,711.44) and sought approval of an attorney's fee in the amount of \$73,094.45.
6. The Single Commissioner approved a fee of \$59,632.69, the maximum 33.3% of the remaining lump sum (\$179,077.14) paid to Claimant upon the expiration of the appellate panel appeal period. The remainder of Counsel's requested fee was denied.
7. The question before the Appellate Panel was whether the Act and Regulations allow the Commission to award an attorney's fee on sums previously paid to a claimant on a weekly basis prior to the date an award becomes final. A majority of the Panel affirmed the Single Commissioner in full, noting that the Full Commission Order became final (or "secure") after the 30-day appeal period expired. Counsel would only be entitled to a fee once the Order became final and Claimant's compensation was secured.
8. However, two members dissented in part, concluding that Counsel would be entitled to a fee on October 17, 2017, the date the Appellate Panel issued its Decision and Order.
9. Counsel timely filed the instant petition for rehearing alleging that they are entitled to a fee on all compensation paid, including sums paid to Ms. Cartee weekly during the pendency of the Appellate Panel Appeal because Counsel "secured" payment of compensation on April 13, 2017, the date of the Single Commissioner's Decision and Order on the merits.

CONCLUSIONS OF LAW

1. Regulation 67-215B authorizes the Commission to "entertain motions to *reconsider* an order, opinion, or award, if the purpose of the motion is not an attempt to reargue the merits of the dispute." S.C. Code Regs. 67-215B (2022). Claimant's pleading is entitled "Motion for *Rehearing*." The South Carolina Administrative Procedures Act contemplates the filing of "petitions for rehearing" and has been interpreted by the Courts as providing the right to file a motion for rehearing with the Appellate Panel. S.C. Code Ann. § 1-23-380(1)(2008, as amended); Rhame v. Charleston County School District, 412 S.C. 273 (2015). Commission regulations authorize it to entertain "motions to reconsider." See S.C. Code Regs. 67-215B (2018, as amended). While there is no explanation for the use of the two different terms, the legal standards for review are similar. See S.C. Code Regs. 67-215B (2018, as amended) ("A

Single Commissioner or the Full Commission may entertain motions to reconsider. . . if the purpose of the motion is not an attempt to reargue the merits. . .”) and Rule 221, SCAR (“A petition for rehearing shall. . . state with particularity the points supposed to have been overlooked or misapprehended by the Court.”); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532 (2001)(“. . .nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.”). Therefore, the Commission considers Counsel’s Motion for Rehearing as authorized by S.C. Code Regs. 67-215B (2022).

2. The Commission fully and contemplatively considered Counsel’s Motion for Rehearing and it is, hereby, denied. The Appellate Panel did not overlook or misapprehend any points in making its decision. Therefore, the Commission is bound by its current laws and regulation as written. “Attorney fees. . .for services under this title are subject to the approval of the Commission.” S.C. Code Ann. § 42-15-90 (2012, as amended). S.C. Code Regs. 67-1205(C) permits a maximum attorney fee of 33.3% of the “total amount of compensation.” S.C. Code Regs. 67-1205 (C)(2022). “Compensation” is defined as “the money allowance payable to an employee.” S.C. Code Ann. § 42-1-100 (1962). “If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the “settlement or award.” S.C. Code Regs. 67-1205(C)(2)(2022). There is no dispute that through her Counsel’s able efforts, Claimant was awarded a total of \$339,711.44 as monetary compensation during the pendency of her claim. Counsel urges the Commission to adopt an interpretation of Regulation 67-1205(C) that allows the Commission to calculate an attorney’s fee based upon the total amount of benefits paid after a finding of maximum medical improvement rather than calculating the fee based upon the settlement or award ultimately secured as specifically stated in the statute. We decline to adopt this interpretation.
3. Our regulations require that an attorney “secure” compensation for a client prior to taking a fee on the settlement or award. The Merriam-Webster Dictionary defines “secure” as “to put beyond hazard of losing or of not receiving; guarantee.[sic]”¹ The Workers’ Compensation Act provides the appellate procedure for parties seeking review of Commission awards. *See* S.C. Code Ann. § 42-17-50 (1981, as amended) (providing for an application for review to the

¹ Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/secure> (last accessed October 7, 2022).

Appellate Panel within 14 days after notice of the award) and S.C. Code Ann. § 42-17-60 (2007, as amended) (The Appellate Panel's award is conclusive and binding as to all questions of fact but is not conclusive and binding as to questions of law until the expiration of the 30-day judicial appeal period). In this case, neither party ultimately sought judicial review of the Appellate Panel's Order for questions of law or questions of fact. Holding that the Commission's award was final on both questions prior to the expiration of the appeal period obscures the legislature's intent to provide for a full 30 days to file an appeal. Case v. Hermitage Mills is unhelpful to this analysis. Case interpreted a prior version of Section 42-17-60 that included a 30-day supersedes. Defendants' paid benefits while the claim was on appeal. There was no supersedes issue. *See generally Case v. Hermitage Cotton Mills*, 236 S.C. 515 (1960).

4. Permitting an attorney to collect a fee on benefits previously received by a claimant is inconsistent with the purpose of the Workers' Compensation Act, and contrary to the legislature's intent. *See Cokeley v. Robert Lee, Inc.*, 197 S.C. 157 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of the uncertainties of a trial in a suit for damages. . . such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results."); S.C. Code Regs. 67-1205C(5) (requiring an attorney to calculate the fee on the lump sum payable to the client *after* the award or settlement is commuted to present value);
5. Furthermore, awarding Counsels' requested fee is contrary to the requirements set forth in S.C. Code Regs. 67-1205 B because it conflicts with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee. Regulation 67-1205B deems a contingent fee reasonable if the fee is calculated according to subsection C, the attorney fully explains the fee agreement and informs the client of the net recovery, the client signs the Form 61 fee petition, and the fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee. S.C. Code Regs. 67-1205B (2022). SCRPC Rule 1.5(a) and Glasscock v. Glasscock require that the "fee customarily charged in the locality for similar legal services" and the "customary legal fees for similar services" be considered when

assessing the reasonableness of a requested attorney's fee. Approving an attorney fee to be paid from benefits previously received by a claimant would not be a fee customarily charged in the locality for similar services. It is contrary to established law, inconsistent with the purpose of the Act, and incompatible with legislative intent. Though Counsel referenced prior cases in which a fee has been awarded under certain circumstances, the record is bereft of any evidence indicating that a fee had been customarily awarded in similar circumstances. See Glasscock v. Glasscock, 304 S.C. 158, 161 (1991).

6. The Single Commissioner and the Appellate Panel faithfully applied the plain meaning of the Act and Regulations to the facts of this case and, in their discretion, awarded a reasonable and appropriate attorneys' fee.

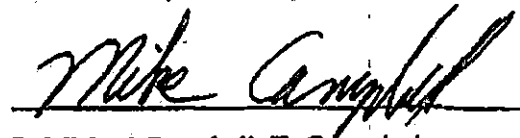
IT IS ORDERED that Counsel's Petition for Rehearing is denied. This is the final Decision of the Commission on this claim. The parties retain all appellate rights pursuant to S.C. Code Ann. § 42-17-60.

IT IS SO ORDERED.

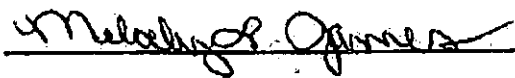
(date) Columbia, SC



T. Scott Beck, Chairman



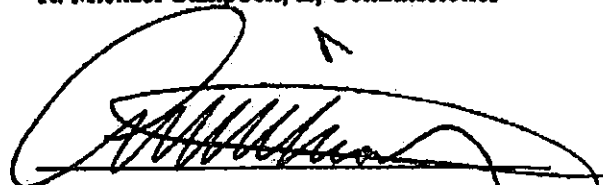
R. Michael Campbell, II, Commissioner



Melody L. James, Commissioner



Aisha Taylor, Commissioner



Avery B. Wilkerson, Jr., Commissioner

Order Served via email:

Preston F. McDaniel McDaniel Law Firm preston@pfmcdlaw.com	John M. Milling Attorney at Law johnmilling@bellsouth.net
--	--

Order Served via USPS:

Preston F. McDaniel McDaniel Law Firm 1315 Elmwood Ave Columbia, SC 29201 Pamela Cartee 1825 Woodbine Drive Hartsville, SC 29550	John M. Milling Attorney at Law P.O. Box 519 Darlington, SC 29532
--	--

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on January 4, 2023

Exhibit 23

RECEIVED

Apr 12 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
R. Michael Campbell, II, Commissioner
Avery B. Wilkerson, Jr., Commissioner

W.C.C. FILE NO.: 2001117

Appellate Case No. 2022-001595

TIMOTHY STARNES..... CLAIMANT, APPELLANT,

v.

MERITAGE ASSET MANAGEMENT, INC. D/B/A CENTURARY GLASS, EMPLOYER, and
INSURANCE COMPANY OF THE WEST, CARRIER.....RESPONDENTS.

FINAL BRIEF OF APPELLANT



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STATEMENT OF ISSUE ON APPEAL

1. Whether the Majority Opinion of the Full Commission Affirming the Single Commissioner's Decision and Order reducing Attorney Fees to \$13,458.02 was an abuse of discretion and improperly based on speculation, surmise, and conjecture that ignored the preponderance of the evidence in the record.

STATEMENT OF THE CASE

This matter was before the Full Commission's En Banc Appellate Panel pursuant to Appellant's Form 30, requesting review of Single Commissioner Beck's (hereinafter "Single Commissioner") February 17, 2022 Decision and Order. This matter was before the Single Commissioner on January 5, 2022 in Columbia, South Carolina pursuant to the Single Commissioner's own request to set a hearing to determine if attorney fees should be approved.

Claimant was involved in an accident arising out of and in the course and scope of his employment due to missing a step coming down a ladder on January 6, 2020. Claimant alleged he sustained injuries to his low back and right knee in the course and scope of his employment. Dr. Adam Schaaf released Claimant from care on December 21, 2020, with a 20% impairment rating to his right leg and recommended future care including "pt, injections, nsaid, topicals, and eventually an arthroplasty." (R. p. 103). Defendants disputed the causal connection between the permanent impairment and treatment suggested for the work injury, and they exercised their right to obtain a second opinion concerning Claimant's impairment and the work-related injury. On April 1, 2021, Dr. Robert Lowery evaluated Claimant's right knee and found Claimant's knee condition was all preexisting and none of his impairment was attributable to his work-related injury. (R. pp. 105-106). For the low back, Dr. Alexander completed a Form 14B that gave a 5% impairment to the lumbar spine and opined that future medical treatment would include periodic injection therapy and medications as needed. (R. p. 104).

The parties entered into a Clincher Agreement and Final Release (hereinafter "Clincher") that was signed on July 8, 2021 and submitted to the South Carolina Workers' Compensation Commissioner (hereinafter "SCWCC") for approval. (R. pp. 38-43). The SCWCC approved, processed, and mailed back the Clincher on July 12, 2021. Approximately one month later, the

Single Commissioner, for the first time, requested a breakdown concerning money set aside for future medical care. There was no specific amount or formal set aside in the Clincher for future medicals due to a dispute concerning entitlement to future medical benefits, which was clearly noted in the Clincher. (Id.).

The Single Commissioner ultimately denied Claimant's Form 61 and set the matter for a hearing on September 8, 2021. (R. p. 110). Claimant's counsel was the only person to appear, and the Single Commissioner instructed him to figure out a solution to the Single Commissioner's issues with the Form 61. Claimant and his attorney attempted to file an Amended Form 61 setting aside a specific amount for future medical benefits per the Single Commissioner's demands. (R. pp. 50-55). Upon receipt of the Amended Form 61, the Single Commissioner set a second hearing in Walterboro, SC on October 21, 2021. (R. p. 111). Despite the Claimant agreeing that he was aware of the terms of the Amended Form 61 and did not initially care to dispute the matter further, the Single Commissioner continued the matter and advised Claimant to seek another attorney. (R. p. 1). Claimant made several attempts to seek another attorney to advise him regarding the settlement. (R. pp. 107-108). After these attempts, the Single Commissioner reset the matter to be heard on January 5, 2022. (R. p. 112).

At the Single Commissioner's January 5, 2022 Hearing, Claimant took the position that he felt that he is entitled to more money for future medical care relying only on his feelings. There was no evidence submitted to substantiate these feelings. Claimant's counsel took the position that additional medical treatment was in dispute and not guaranteed, as was spelled out in the Clincher. Claimant's counsel relied on not only the Clincher but the medical evidence showing competing opinions concerning causation and future medical benefits. Regarding the breakdown of the settlement proceeds, Claimant's counsel relied on the Utica language included in the Clincher for

the breakdown of the settlement. Finally, Claimant's counsel took the position that under S.C. Regs. 67-1204-1207 and SC Rule 1.5, he was entitled to a fee of 1/3 of the "total amount of compensation," which in this case was \$85,000.00.

STANDARD OF REVIEW

The Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. Code 1976, § 1-23-380.

South Carolina Code Ann. § 1-23-380 establishes the "substantial evidence" rule as the standard of review for decisions of the Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). Pursuant to that rule, a reviewing court may reverse or modify a decision of an administrative agency if the findings, inferences, conclusions, or decisions of that agency are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Code 1976, § 1-23-380(5)(e). Substantial evidence is defined as: "Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It must be enough to justify, if the trial went to a jury, refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. This is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981) at 135-136, 276 S.E.2d at 307.

Appellate courts are not at liberty to substitute their view of the evidence for that rendered by the Commission. Rather, "[t]he Circuit Court's role is appellate only and is limited to deciding whether the Commission's decision is not supported by substantial evidence or is controlled by some error of law." *Rogers v. Kunja Knitting Mills Co.*, 312 S.C. 377, 440 S.E.2d 401 (Ct. App.

1994). When reviewing an appeal from the Workers' Compensation Commission, the appellate court may not weigh the evidence or substitute its judgment for that of the Full Commission as to the weight of the evidence and questions of fact. *Therrell v. Jerry's, Inc.*, 370 S.C. 22, 26, 633 S.E.2d 893, 894-895 (2006).

Moreover, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). In workers' compensation cases, the Appellate Panel is the ultimate finder of fact. *Shealy v. Aiken County*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). When the evidence is conflicting over a factual issue, the findings of the Appellate Panel are conclusive. *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 290, 599 S.E.2d 604, 611 (Ct. App. 2004). The final determination of witness credibility and the weight to be accorded evidence is reserved for the Appellate Panel. *Bass v. Kenco Group*, 366 S.C. 450, 458, 622 S.E.2d 577, 581 (Ct. App. 2005).

ARGUMENTS

I. The Majority of the Full Commission erred by affirming the Single Commissioner who found as fact and concluded as law that Counsel's fee was unreasonable because such findings and conclusions are an abuse of discretion and based on surmise, conjecture, and speculation.

In determining entitlement to and reasonableness of attorney fees, the Single Commissioner has authority pursuant to S.C. Code § 42-15-90 and S.C. Code Regs. 67-1204-1207. This authority is unquestioned by Claimant's counsel.

The Majority of the Full Commission erroneously affirmed the Single Commissioner's award of the entirety of the \$44,218.12 based upon surmise, conjecture, speculation, and an

assumption of Claimant's guarantee of future medical benefits. This award is based on misstatements by the Single Commissioner concerning the facts of the case as well as errors of fact and law throughout the Decision and Order.

In what appears to be the overarching basis for awarding Claimant the entire \$44,218.12 of the settlement, the Single Commissioner (and subsequently the Majority of the Full Commission) incorrectly wrote in the "Statement of the Case" that Claimant's settlement of \$85,000.00 included \$44,218.12 that was an "entitlement to [medical] benefits." (R. pp. 4-5, 17-18). While Claimant was assigned a 20% permanent impairment to the leg by one doctor, a competing opinion found he had no causally related permanent impairment.

At the time of signing the Clincher in July 2021, no post-MMI medical benefits had been provided. Claimant was released at MMI by Dr. Schaaf on December 21, 2020. (R. pp. 100-103). Furthermore, the approved Clincher clearly stated disputes had "arisen concerning Claimant's entitlement to further medical care and treatment, further temporary total disability compensation and the extent of causally related permanent disability, if any." (R. p. 39). The Single Commissioner (and subsequently the Majority of the Full Commission) materially altered the language of the parties' agreed upon and approved Clincher. What was a settlement amount based on denied and disputed future treatment of body parts was changed into an entitlement to benefits that is not found in the Clincher, and it has led to the multitude of errors in the Single Commissioner's Decision and Order that was upheld by the Majority of the Full Commission.

As it pertains to the Single Commissioner's Finding of Fact 9, there is no evidence in the record of Claimant's counsel's negotiations with Defendants in this matter, and I do not believe any such evidence is admissible in this matter. It is true that, as is required under the law of this State, Mr. Alexander represented his client diligently and tirelessly in pursuit of the best result

possible in the underlying claim. However, Claimant's counsel did not "reverse course" during this fee petition hearing as found as fact by the Single Commissioner. (R. p. 7). The Single Commissioner put Claimant's counsel in the unfortunate and awkward position of having to denigrate his client's case and defend their decision to amend the Form 61, as Claimant and his counsel agreed. During such defense, Claimant's counsel attempted to explain why only \$1,000.00 was set aside in the Amended Form 61, and it is true and accurate that the future medical benefits recommended by the doctors were opinions and not awards or orders that guarantees Claimant anything. As such, Claimant's counsel was required to put forth the position as if he was the Defendants working against his client. To find Claimant's counsel "reversed course" is improper and prejudicial to use as a basis for reducing the attorney fees.

In his Finding of Fact 12, the Single Commissioner found, in direct contravention of his Finding of Fact 11 (and the actual language of the Clincher), that the Clincher allocated "\$44,218.12 for future medical treatment." (R. p. 7). The Clincher clearly expressed, as was stated in the Single Commissioner's Finding of Fact 11, that the remaining balance was "in exchange for the Clincher and future medical treatment." (R. pp. 7, 40). The first sentence of Finding of Fact 12 is simply inaccurate. Furthermore, the Single Commissioner found these calculations "indicate an unusual scenario." There is no evidence in the record to support such a finding of an unusual scenario.

Moreover, the Single Commissioner assumed, and created a fiction in his Decision and Order, that there was more money paid for ONLY future medical care than for indemnity. He ignored the language of the Clincher stating this money was also for a clincher of the claim, and he ignored Claimant's counsel's argument concerning the value to Defendants for being able to clincher this claim and avoid additional exposure for increased permanent disability, additional

TTD, or potential permanent and total disability. The Majority of the Full Commission adopted the Single Commissioner's findings of fact as their own, and in so doing, committed the same error. (R. p. 28).

The Single Commissioner's Finding of Fact 15 improperly made prior e-mail correspondence with the Commissioner's assistant part of the record for this fee petition. (R. pp. 7-8). Claimant's counsel was never made aware during the hearing that this correspondence would be a part of the file nor was anything about these emails discussed at the fee petition hearing. Furthermore, the cursory recounting of what was in those emails is not only inaccurate but misleading. It is true that there was no formal set aside for medicals, which is clear from the language of the Clincher. Additionally, to avoid any confusion about what exactly was sent to the Single Commissioner's assistant, I have pasted the emails below:

From: Chip Alexander <chip@leekelaw.com>
Sent: Thursday, July 29, 2021 10:23:43 AM
To: DeBruhl, Shawn <sdebruhl@wcc.sc.gov>
Subject: Re: [secure] Tim Starnes 2001117 Fee Petition

Hi Shawnee,

Can you point me to where or why we can't take a fee off the full amount? SC Regs 67-1204-1207 don't make any mention of medicals and 67-1205 says we can take up to 1/3 "of the total amount of compensation," which in this case, was \$85,000.00. There also isn't anything in SC Rule 1.5 regarding this. Additionally, there isn't an MSA or any formal set-aside for medicals.

- Chip

From: Chip Alexander <chip@leekelaw.com>
Sent: Thursday, July 29, 2021 3:05:45 PM
To: DeBruhl, Shawn <sdebruhl@wcc.sc.gov>
Cc: bfreeman@wjzblaw.com <bfreeman@wjzblaw.com>
Subject: Re: [secure] Tim Starnes 2001117 Fee Petition

Hi Shawnee,

I'm sorry and don't mean to be argumentative, but I still don't understand. 42-1-100 says, "compensation is the money allowance payable to an employee" Reg 67-1205(c) says an attorney may charge up to 1/3 "of the total amount of compensation." None of the exceptions to 1205(c) apply to this settlement and my taking a fee of the entirety of the settlement. Again, the total amount of compensation in this case was \$85,000, and any future care was denied by the defendants, so there wasn't a number specified by myself and defense counsel. I have copied Trapper on here if you need confirmation. Additionally, I'm not sure how 42-15-60 has any bearing on my fee, as this claim is clinched, defendants are not providing any benefits under this statute, and this is not an order from a commissioner.

- Chip

From: sdebruhl@wcc.sc.gov <sdebruhl@wcc.sc.gov>
Sent: Thursday, July 29, 2021 2:29:31 PM
To: chip@leekelaw.com <chip@leekelaw.com>
Subject: Re: [secure] Tim Starnes 2001117 Fee Petition

Guidance regarding future medical can be found in Reg. 67-1205(c), Section 42-1-100 and 42-15-60.

Thanks

The Single Commissioner's Finding of Fact 15 misstated Mr. Alexander's e-mails, as he was referencing the mention of S.C. Code § 42-15-60 by the Commissioners' assistant and clarifying that it refers to medical care that has been ordered by a Commissioner, which was not the case in the underlying claim. Additionally, Defendants were not providing any medical benefits under this statute. The Majority of the Full Commission adopted the Single Commissioner's findings of fact as their own, and in so doing, committed the same error. (R. p. 28).

In his Finding of Fact 17, the Single Commissioner stated that Claimant's counsel didn't provide any rationale for setting aside \$1,000.00 for future medicals. (R. p. 8). First, it is untrue that no rationale was given, as Finding of Fact 9 notes I made clear that none of the medical benefits suggested by the physicians were guaranteed (and were not ordered by a commissioner). (R. p. 7). Further, the Single Commissioner asked for attorney-client privileged information, which clearly put Claimant's Counsel in the awkward position of having to divulge confidential information concerning the agreement between himself and a client. To ask for such privileged information, and then hold that against Claimant's Counsel, is prejudicial.

Additionally, at the first hearing in Yemassee, the Single Commissioner advised Claimant's Counsel to seek a resolution of the issue of no money being set aside for future medical care. As such, Claimant's Counsel attempted to have Defendants amend the Clincher to clarify this issue but considering it had already been processed and approved two months earlier, they were unwilling. Because of this, Claimant and his counsel met again to discuss setting aside money for medical benefits per the Single Commissioner's request, and we agreed to file an Amended Form 61 setting aside an amount to satisfy the Single Commissioner. (R. p. 50-55).

The Single Commissioner's Finding of Fact 17 further incorrectly assumes that any evidence must be offered to explain how the amount Claimant and his counsel agreed to set aside

was reached. Again, the Single Commissioner speculated that Claimant would be guaranteed ANY additional medical benefits, and he ignored the bona fide dispute regarding future medical benefits, as is clearly stated in the Clincher. (R. p. 39). The Single Commissioner treated opinions in the record as evidence to make a finding concerning entitlement to additional medical treatment, when no such finding is allowable, as it is in direct contravention of the approved Clincher, which states, “[t]he parties acknowledge that the opinions stated by physicians regarding the nature and extent of Claimant’s medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect.” (R. p. 42). Additionally, there was no evidence put forth to substantiate the Single Commissioner awarding all \$44,218.12 to Claimant and not accounting for the value to Defendants to clincher this claim. The Majority of the Full Commission adopted the Single Commissioner’s findings of fact as their own, and in so doing, committed the same error. (R. p. 28).

In his Conclusion of Law 1, the Single Commissioner provided no basis in the law for how “compensation” does not include funds paid for future medical care (R. pp. 8-9). S.C. Code § 42-1-100 states, “[t]he term ‘compensation’ means the money allowance payable to an employee or to his dependents as provided for in this Title and includes funeral benefits provided in this Title.” The “money allowance payable to an employee” in this case was \$85,000.00, which is the total amount of compensation. As such, under S.C. Code Reg 67-1205B, Claimant’s counsel should be entitled to an attorney fee of \$28,333.33, or 1/3 of the total amount of compensation.

Regardless, to avoid the very scenario we have now found ourselves in, Claimant and his counsel agreed to set aside \$1,000.00 to account for the non-guaranteed future medical benefits. An Amended Form 61 was filed requesting an attorney fee of \$28,000, or 1/3 of the remaining \$84,000.00, which should be considered reasonable under S.C. Code Reg 67-1205B. (R. pp. 50-

55). The Single Commissioner should have relied on the agreement between Claimant and his counsel since no future care had been ordered by a commissioner and no medical benefits were guaranteed. To find Claimant is “entitled” to any amount for future medical benefits (that is not specified in the Clincher), is based purely on surmise, conjecture, and speculation. The Majority of the Full Commission adopted the Single Commissioner’s conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

While there is no error in the Single Commissioner’s Conclusion of Law 4, I mention this here only to note that all aspects of this Conclusion of Law were met by Claimant and his counsel, especially with the filing of the Amended Form 61. (R. p. 9). The parties agreed to a contingency fee of 1/3, the fee agreement was fully explained to Claimant, the dollar amount of the fee that would be deducted from client’s benefits was explained, and Claimant signed the Amended Form 61. (R. p. 51). There is no evidence these actions were not done.

While we do not necessarily agree, and it is unclear if Conclusion of Law 6 misstated the law, as was done previously in his Decision and Order, the Single Commissioner changed the facts of this case to find Claimant is “entitled to medical care” when every piece of evidence contradicts such a finding. As discussed above, future medical benefits (and even permanent impairment) were disputed in this case and had not been ordered by a commissioner. Claimant’s counsel worked his hardest to secure a settlement that he and Claimant agreed was favorable considering the dispute. The Majority of the Full Commission adopted the Single Commissioner’s conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

In his Conclusion of Law 7, the Single Commissioner relied on En Banc orders that should not control in this case. (R. p. 10). While we could debate whether this is binding precedent (or whether there is any basis for not allowing a fee off the entirety of this settlement), that is not

necessary in the case at hand because the Amended Form 61 does not attempt to charge a contingency fee against benefits provided to an injured worker for medical treatment. (R. 50-55). First, the benefits referenced were never provided. Second, the money paid in settlement was clearly provided with the understanding that there was a dispute as to future medical benefits. While the Clincher unfortunately was not clear as to what amount was specifically for future medical benefits, this is why Claimant and his counsel filed the Amended Form 61 to set aside a number per the Single Commissioner's request.

Single Commissioner Conclusion of Law 9 is flat out wrong and based on speculation. (R. pp. 10-11). Claimant's Counsel vehemently rejects any notion that he did not adequately advise his client of what he was signing. It could not be clearer that Claimant agreed to the fee Counsel purports to charge, as Claimant signed not only the original Form 61 but an Amended Form 61, which, in plain language, states, "I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my **compensation** and I understand how much money I will receive after I pay my attorney." (R. pp. 45, 47, 51, 53).

Additionally, without debating the law on sums allocated for future medical and reliance on en banc orders, Claimant and his attorney did in fact set aside \$1,000.00 for future medical care on the Amended Form 61, which Claimant's counsel is not attempting to take a fee off at this time. The Single Commissioner essentially decided a merits issue regarding compensability of an injury and entitlement to treatment. He relied on one opinion that recommended a future knee surgery to conclude that Claimant, in fact, would be entitled to this surgery, when such a conclusion is not supported by the language of the Clincher, is directly contradicted by other medical evidence, and was never ordered previously by a commissioner. The Single Commissioner has taken it upon himself to entitle Claimant to medical benefits that were disputed. The Majority of the Full

Commission adopted the Single Commissioner's conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

The Single Commissioner's Conclusion of Law 10 is setting a dangerous precedent for the Commission as to what evidence may be relied upon in finding injuries compensable and entitlement to future medical care. The Single Commissioner explicitly stated that he relied on Claimant's testimony that he THINKS he will require a knee replacement in the future. (R. p. 11). If the Commission would like to set this standard going forward, I am happy to forego this additional fee to know that medical evidence stated to a reasonable degree of certainty is no longer necessary in determining compensability or entitlement to future medical care. Considering that is impossible under our current law, it should also be considered an error of law for the Single Commissioner in this case to rely on lay testimony of a Claimant's thoughts to find he should be entitled to additional benefits. Additionally, there was not an incorrect calculation provided in the original Form 61 or Amended Form 61, which were both explained to Claimant. There is no evidence either breakdown of the total amount of compensation "further complicat[ed]" Claimant's understanding of the settlement terms. The Majority of the Full Commission adopted the Single Commissioner's conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

Single Commissioner Conclusion of Law 11 stated Counsel incorrectly included sums intended for future medical treatment. (R. p. 11). This conclusion is based upon surmise, conjecture, and speculation, especially with the submission of the Amended Form 61. As previously stated, the Single Commissioner found as fact and concluded as law that Claimant is entitled to medical benefits, which were very much disputed and not guaranteed to Claimant. Further, and without evidence to support such a conclusion, the Single Commissioner speculated

as to what amount Claimant may need for future medical care, and it is improper to award anything more than what Claimant and his counsel agreed to, which is \$1,000.00. The Majority of the Full Commission adopted the Single Commissioner's conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

Conclusion of Law 12 does not definitively state but implies the Single Commissioner found that the authorized treating physician's recommendations for future medical treatment are controlling in this case. (R. p. 11). Again, this would set a dangerous precedent that in any future case, the opinion of the authorized treating physician will always be given favor over a competing opinion. In this scenario, claimants would suffer abject prejudice from the outset in any case simply because they do not get to direct their own care. An opinion of the authorized treating physician could be completely contradictory to the preponderance of the medical evidence, but in this scenario, it is still given deference simply because it was the authorized treating physician.

Additionally, this would render second opinions futile. As has been mentioned throughout, the Single Commissioner relied on one opinion that indicates Claimant may need a future knee surgery to conclude that Claimant, in fact, would be entitled to this surgery, when such a conclusion is not supported by the language of the Clincher and was never ordered previously by a commissioner. Furthermore, the issue of entitlement to future medical benefits was not an issue before the Single Commissioner with the fee petition. The Single Commissioner has taken it upon himself to entitle Claimant to medical benefits that were disputed. Finally, no evidence exists in the record to support concluding that a right knee arthroplasty is the most expensive portion of this physician's recommended treatment and was purely speculative to conclude. The Majority of the Full Commission adopted the Single Commissioner's conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

The Single Commissioner's Conclusion of Law 13 stated that the Clincher is not binding on the issue of attorney fees and reasonableness thereof. (R. pp. 11-12). This is a misstatement of the argument put forth by Claimant's Counsel at the hearing. Counsel was simply pointing to the *Utica* language as the only definitive breakdown of the total settlement. While the Single Commissioner does have to ensure the reasonableness of attorney fees, it is quite clear under S.C. Code Reg 67-1205B that 1/3 of the total amount of compensation is reasonable.

Additionally, the Single Commissioner erroneously found an "injustice" with no evidence to support such an accusation. He concluded Claimant MAY require expensive future medical treatment. First, there is no evidence concerning potential costs for any of the treatment one doctor recommended. Second, to conclude Claimant MAY need future care does not meet the standard of more likely than not. Furthermore, it is speculation to not only say Claimant will have such treatment but how it will be paid for in the future. Moreover, as has been stated ad nauseum, NONE of this recommended medical treatment was guaranteed or had been ordered by a commissioner. Lastly, this Conclusion of Law erroneously determined that more than half of the settlement was dedicated to future medical treatment when no such evidence supports such a finding, and the settlement funds were also for the value to clincher the claim and any conclusion but this is speculation, surmise, and conjecture. The Majority of the Full Commission adopted the Single Commissioner's conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

The Single Commissioner's Conclusion of Law 14 (similarly to Finding of Fact 9) relied on non-existent evidence in the record of Claimant's counsel's negotiations with Defendants in this matter, and I do not believe any such evidence is admissible in this matter. (R. p. 12). It is true that, as is required under the law of this State, Mr. Alexander represented Claimant diligently and

tirelessly in pursuit of the best result possible in the underlying claim. However, Claimant's counsel did not "reverse course" during this fee petition hearing. As previously mentioned, the Single Commissioner put Claimant's counsel in the unfortunate and awkward position of having to denigrate his client and defend their decision to amend the Form 61, as Claimant and his counsel agreed to do. During such defense, Claimant's counsel attempted to explain why only \$1,000.00 was set aside in the Amended Form 61, and it is true and accurate that the future medical treatment identified by the doctors were opinions and not awards or orders that guarantee Claimant anything. As such, Claimant's counsel was required to put forth the position as if he was the Defendants working against his client. To find Claimant's counsel "reversed course" is improper and prejudicial to use as a basis for reducing the attorney fees.

Furthermore, Claimant's Counsel attempted explain how the value of a clincher in this claim was worth more than zero dollars and how it would be valued as the majority of the remaining money for Defendants to avoid exposure for additional TTD, change in condition, or potential permanent and total disability. (R. p. 88). The Single Commissioner simply dismissed any argument regarding this from Claimant's Counsel. The Majority of the Full Commission adopted the Single Commissioner's conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

Single Commissioner Conclusion of Law 15 clearly shows the Single Commissioner was only left to speculate on future medical treatment, which he did in awarding the entirety of the \$44,218.12 to Claimant and not accounting for the value of the clincher to Defendants. (R. p. 12). For the Single Commissioner to conclude that because he cannot speculate on one end of the calculation only leads to the solution of awarding all funds is purely speculation. This matter concerning future care was agreed upon and decided by Claimant and his Counsel, which is

evidenced by the Amended Form 61. The only thing that is NOT speculation, surmise, and conjecture is that Claimant and his Counsel agreed to set aside this amount and both parties were aware of how much they were getting, as evidenced by the signing of the Amended Form 61. (R. pp. 50-55). The Majority of the Full Commission speculated likewise when they adopted the Single Commissioner's conclusions of law as their own, and in so doing, committed the same error. (R. p. 28).

The Majority of the Full Commission found as fact in Finding of Fact 2 that the defendants accepted the claim and provided treatment. (R. p. 29). No such evidence exists in the record to substantiate this claim was accepted, and to rely "generally" on the Clincher is speculative at best. It is improper to find a claim has been accepted simply because some treatment has been provided, and the Clincher made it very clear that there was a dispute regarding entitlement to future medical care, which clearly shows they had not accepted the claim. (R. p. 39).

The Majority of the Full Commission's Finding of Fact 5 is wholly inaccurate and directly contradicts the Single Commissioner hearing transcript, as it pertains to Claimant's Counsel. (R. p. 29). As was stated to the Full Commission in a brief and oral arguments, a rationale was provided to the Single Commissioner for why more was paid to clincher the claim than was paid for indemnity. (R. p. 88).

The Majority of the Full Commission's Finding of Fact 7 is wholly inaccurate and directly contradicts the Single Commissioner hearing transcript. (R. p. 30). Again, for the Single Commissioner or Majority to disagree with a rationale is one thing, but to find as fact that no rationale was put forth is wholly inaccurate and contradicts the record. When asked why \$1,000.00 was set aside, Counsel explained to the Single Commissioner that there was a chance

the knee was found not compensable and the medical treatment was not guaranteed. (R. p. 89). Furthermore, it is Counsel's position that there is not a requirement under the Act that he provide a rationale for valuing future medical care, especially when it was not a guaranteed benefit or entitlement to Claimant.

The Majority of the Full Commission's Conclusion of Law 1 affirms the Single Commissioner's calculation of attorney fees. They concluded that "Counsel is not entitled to take a fee on sums paid for future medical treatment pursuant to the Act and Commission Regulations." (R. p. 30). First, the Majority only generally references the Act and regulations here and provided no specific law or regulation under the Act, which clearly appears to be based on their arbitrary and capricious opinions and not the law. Second, Counsel and Claimant filed an Amended Form 61 that specifically set aside an amount for medical treatment that Counsel is NOT attempting to take a fee on. (R. pp. 50-55). As such, this conclusion is erroneous since Counsel ultimately only requested a fee from the \$84,000.00 in compensation that was not specifically set aside by him and his client on the Amended Form 61. If the Majority is now saying Counsel is not entitled to a reasonable fee of 1/3 of the \$84,000.00, it is our position this is also a clear error of law, as Regulation 67-1205 allows for such a fee amount.

The Majority of the Full Commission's Conclusion of Law 2 is not debated insofar as it pertains to the Commissioner's authority to approve the attorney's fee. (R. p. 31). The Majority is missing the point of our appeal in that we disagree, and believe it is a clear error of law, that the Single Commissioner is allowed to materially change the terms of a settlement and Clincher agreement between the parties.

Conclusion of Law 3 from the Majority incorrectly concludes as law that the claim for the right knee was admitted simply because some of treatment has been provided. (R. p. 31). It is

erroneous to conclude that, any time defendants provide medical treatment, it subjects them to admitting a claim. Such a conclusion is not only prejudicial to defendants but would also lead to future prejudice against claimants by defendants refusing to provide treatment so that they are not found to have admitted a claim they may later choose to deny after exercising their rights under the Act. To make such a conclusion would never allow defendants to raise a defense such as preexisting condition (or any other defense) that they would clearly not know about until they have already started providing treatment.

The Majority of the Full Commission's Conclusion of Law of 4 is also inaccurate. (R. pp. 31-32). The Single Commissioner specifically ordered an award for medical costs, and it is inexplicable that the Majority would conclude otherwise. He found as fact and concluded as law that Claimant was "entitled" to medical treatment, which was in dispute in the underlying claim. To conclude that he only found the attorney fee is unreasonable while ignoring that he found Claimant was entitled to medical treatment clearly ignores parts of the Single Commissioner's Decision and Order. Additionally, to conclude that no additional award of benefits other than what was agreed to by the parties is also inaccurate, as the parties agreed in the Clincher on specific amounts, and Claimant and his Counsel agreed to a specific amount in the Form 61 and Amended Form 61. (R. pp. 45-55). The Single Commissioner clearly awarded more to Claimant than the parties agreed to, otherwise this appeal would not have happened.

The Majority's Conclusion of Law 5 is correct in what the Single Commissioner decided, but the Majority is again missing the point of this appeal. (R. p. 32). The claimant was not "entitled" to medical care, as no such benefit had been awarded by a commissioner. The need for and entitlement to additional medical care was very much in dispute, as is specified in the Clincher. (R. p. 39).

The Majority of the Full Commission's Conclusion of Law of 6 is clearly arbitrary and capricious as it states, ". . . the future treatment valuation in this case is speculative **considering the other facts and circumstances.**" (R. pp. 32-33). The Majority failed to specify what the other facts and circumstances are that made the future treatment valuation speculative. Further, as discussed above, Counsel did provide a rationale for how the \$1,000.00 was reached.

The Majority of the Full Commission's Conclusion of Law of 7 says the fee is unreasonable because it is not a fee customarily charged in the locality for similar services and implies it does not meet S.C. Code Regs 67-1205B and Rules of Professional Conduct 1.5(a)(3). (R. p. 33). This is a further abuse of discretion, as the Majority has provided no explanation for how a 1/3 fee does not comport with the referenced laws and regulations, nor have they provided any basis for how this fee, which is exactly what is stated as reasonable under the Act and Regulations, is not customarily charged in the locality for similar services. Additionally, the Majority's Decision and Order is the FIRST time there was any mention of the *Glasscock* factors. (Id.). During the oral arguments before the Full Commission, NONE of the commissioners hearing the appeal raised any of these six factors or requested any information that would substantiate now using these against Counsel in disapproving the Amended Form 61. (R. pp. 91-99).

The Majority of the Full Commission's Conclusion of Law 8 stated there is no basis in the Act for awarding Mr. Alexander mileage. (R. p. 33). Admittedly, Mr. Alexander was unable to voice the statute at the time. However, while this is only a minor issue in this case, we do want to note now there is foundation in the Act for awarding mileage. It is our position that S.C. Code 42-3-130 provides for mileage reimbursement for Mr. Alexander since the Single Commissioner summoned him to appear at three separate locations (Yemassee, Walterboro, and Columbia), none of which were the jurisdictions of this claim. Additionally, the Single Commissioner made the odd

decision to swear in Mr. Alexander as if he is a witness, which we believe brings him under the purview of S.C. Code 42-3-130. (R. p. 88).

CONCLUSION

For the reasons set forth above, Claimant's Counsel respectfully requests that the Order of the Full Commission be reversed with regards to the Findings of Fact and Conclusions of Law concerning the Amended Form 61 Fee Petition, and the Court find the preponderance of the evidence supports finding Claimant's Counsel's petition for a 1/3 fee on the remaining \$84,000.00 is reasonable under the Act and Rules of Professional Conduct. Furthermore, Claimant's Counsel requests reimbursement for mileage for the three hearings the Single Commissioner summoned him to in accordance with S.C. Code 42-3-130.

Respectfully submitted,



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April 12, 2023
North Charleston, South Carolina

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Apr 12 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Gene McCaskill, Commissioner
R. Michael Campbell, II, Commissioner
Avery B. Wilkerson, Jr., Commissioner

W.C.C. FILE NO.: 2001117
Appellate Case No. 2022-001595

TIMOTHY STARNES,.....CLAIMANT,
Appellant,

v.

MERITAGE ASSET MANGEMENT, INC. D/B/A CENTURY GLASS, EMPLOYER, AND
INSURANCE COMPANY OF THE WEST, CARRIER.....RESPONDENTS.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that his Final Brief complies with Rule 211(b), SCACR.



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May 12 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2022-001595

Timothy Starnes,

Claimant, Appellant,

v.

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

Employer,

and

Insurance Company of the West,

Carrier, Respondents.

FINAL BRIEF OF 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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Date: May 12, 2023

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May 12 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2022-001595

Timothy Starnes,

Claimant, Appellant,

v.

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

Employer,

and


New Hampshire Insurance Company,

Carrier, Respondents.

CERTIFICATE OF COUNSEL

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

May 12, 2023



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Aug 29 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Case No. 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident
Fund, Carrier

In Re: Attorney's Fee Petition of Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,

Appellants,

v.

South Carolina Workers' Compensation Commission,

Respondent.

PROOF OF SERVICE

The undersigned employee of Law Office of Bill Nettles, attorney for Respondent South Carolina Workers' Compensation Commission, does hereby certify that service of the Motion to Stay Appeal and Exhibit A was made upon all counsel of record by electronic mail to:

- Preston F. McDaniel: preston@pfmcdlaw.com
- John M. Milling: johnmilling@bellsouth.net

By: 

John L. Warren

August 29, 2023



From: John Warren jw@billnettlelaw.com 
Subject: Cartee v. SCJD - Motion to Stay Appeal
Date: August 29, 2023 at 3:08 PM
To: preston@pfmcdlaw.com, johnmilling@bellsouth.net
Cc: Greg Harris greg@harrisgasserlaw.com
Bcc: Roberts, Keith keroberts@wcc.sc.gov, Mcree, Kristen KMcree@wcc.sc.gov

Preston and John,

Please find attached and served upon you a Motion to Stay with an accompanying exhibit. This will be filed in the Court of Appeals this afternoon.

Best,

-John Warren

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2008 Lincoln St.
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Cartee v. SCJD	Cartee v. SCJD
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