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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2022-000271

Dale Brooks, Employee, Respondent,

v.

Benore Logistics Systems, Inc., Employer, and Great American Alliance Insurance Company,
Carrier, Petitioners.

**PETITIONERS' RETURN TO RESPONDENT'S MOTION FOR ATTORNEY'S FEES
AND COSTS**

Pursuant to Rules 240 and 242, SCACR, Petitioners respectfully file this Return to Respondent's Motion for Attorney's Fees and Costs. The grounds of the Return are as follows:

1. Rule 242(j)(1) of the *South Carolina Appellate Court Rules* states that, "[w]hen the decision of the Supreme Court *has the effect* of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court." (emphasis added).

2. Petitioners served a petition for writ of certiorari asking this Court to review the following issues:

- (1) Under South Carolina law, can the Court of Appeals ignore the weight assigned to the evidence by the [appellate panel] and substitute its own preferences for how much weight should be assigned to evidence contained in the record when reviewing an appeal from the [appellate panel]?
- (2) Whether the Court of Appeal's interpretation of S.C. Code Ann. 42-1-172 (2007) relieved the claimant of his burden of proof for establishing a compensable repetitive

trauma injury under South Carolina law when it determined that the [appellate panel] need not “make a separate factual finding that the employee’s job duties were repetitive.”

3. In *Brooks v. Benore Logistics System Incorporated*, this Court stated that “Petitioner argues the court of appeals improperly reversed the appellate panel’s finding that section 42-1-172 requires a two-part analysis. **We agree.**” Op. No. 28198 (Howard Adv. Sh. No. 14 at 20) (S.C. Sup. Ct. filed Apr. 10, 2024), 2024 WL 1546458, at *6 (emphasis added).

4. This Court went on to state:

“It is self-evident that, to receive compensation for a *repetitive* trauma injury, a claimant must first prove that his or her job is in fact *repetitive*. Thus, we find the plain language of section 42-1-172 requires claimants to show, and the Commission to find, that (1) the nature of the claimant’s work is repetitive; and (2) as a result of that repetitive employment, and as established by a preponderance of the evidence, there is a causal link between the repetitive work and the claimant’s injury.” (emphasis in original).

5. Consequently, this Court agreed with Petitioners’ argument that the Court of Appeals erred in holding section 42-1-172 did not require the claimant to prove the job at issue was repetitive to recover benefits for a repetitive trauma injury. Because Petitioners prevailed on this issue—which in turn modified the court of appeals’ decision—this Court’s decision “has the effect of affirming . . . in part . . . the judgment of the lower court or tribunal [appellate panel] which was on appeal[.]” Rule 242(j)(1), SCACR. Specifically, this Court’s holding affirmed the appellate panel’s recognition of the “two-part test” claimants must establish to recover benefits in a repetitive trauma claim.

6. Because this Court’s decision has the effect of affirming a holding of the appellate panel, Rule 242(j)(1), SCACR provides that “costs shall be allowed only as ordered by the Supreme Court.” Therefore, this Court has discretion to order costs. Petitioners respectfully assert that justice supports that each party pay their own attorney’s fees and costs for these proceedings.

7. Notably, this Court's decision has created "new caselaw" in the workers' compensation arena. Had Petitioners not sought this Court's review of the Court of Appeals' decision, a claimant would be able to recover benefits under section 42-1-172 without showing the job duties were repetitive in nature. However, because of this Court's decision, it is now clear a claimant must meet both elements of a two-part test to prove a compensable repetitive trauma injury.

8. Had Petitioners lost on all issues presented before the Court, it appears the Court would be required to grant Respondent's motion for attorney's fees and costs. However, the Court's decision sustained one of Petitioner's arguments (and "has the effect of affirming" one of the appellate panel's findings); therefore, Petitioners respectfully request that the Court deny Respondent's motion for attorney's fees and costs.

WHEREFORE, Petitioners Benore Logistics Systems, Inc., and Great American Alliance Insurance Company respectfully request that the Court deny Respondent's motion for attorney's fees and costs.

Signature page follows

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Will Childers", positioned to the left of a vertical line.

William F. Childers, Jr. (S.C. Bar # 100569)
TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
wchilders@tonnsenbach.com
Attorneys for Petitioners, Benore Logistics
Systems, Inc., Employer, and Great American
Alliance Insurance Company, Carrier

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