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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

Appellate Case No.: 2022-000282

Michael K. Crowley, Employee,..... Appellant,

vs.

Darlington County, Employer, and  
South Carolina Association of Counties SIF, Carrier..... Respondents.

**RESPONDENTS' PETITION FOR REHEARING AND RECONSIDERATION**

Respondents, Darlington County and South Carolina Association of Counties SIF, by their undersigned attorney, respectfully Petition for Rehearing and Reconsideration of the Court's Opinion No. 2024-UP-225 filed on June 26, 2024, pursuant to Rule 221 (a), SCACR. This Petition for Rehearing and Reconsideration is limited to the Court's decision in "Section C. Admissibility of Evidence" on pages 10-12 of the Order which specifically addresses the issues surrounding admissibility of a medical report and application of section 42-15-95 of the SC Workers' Compensation Act. The Respondents respectfully assert that the Court of Appeals overlooked, disregarded, and misapprehended the statute in arriving at their decision on this one issue.

## ARGUMENTS

### **A. The decision of the Court of Appeals in Section C appears to be internally inconsistent and contradictory.**

The first sentence of the Order of the Court of Appeals on this issue states, “Crowley argues the Commission erred in admitting the medical opinion and evaluation report of Dr. James Bethea because Respondents failed to comply with the mandatory provisions of Section 42-15-95 of the South Carolina Code. We disagree.” However, in that same section, two pages later, the Court of Appeals states, “We find there was a violation of section 42-15-95....” The first sentence correctly notes that Appellant argued that Respondents failed to comply with 42-15-95 with which the Court of Appeals disagreed. But later in that same section, the Court of Appeals specifically states that Respondents violated 42-15-95. Both statements cannot be true. On their face, these sentences appear to be contradictory. Respondents, and all future readers of this opinion including the SC Workers’ Compensation Commission, will be left to guess or speculate as to the nature of this seeming inconsistency and contradiction. Respondents request that the Court of Appeals correct this inconsistency, or, if no perceived inconsistency or contradiction applies, provide further explanation as to why these statements are not inconsistent and clarify the intent of the Court’s decision on this important issue.

### **B. The Court of Appeals misapprehended and misapplied Section 42-15-95**

Appellant erroneously asserts that the Commission erred in allowing the December 17, 2020, medical report of Dr. James Bethea into evidence on the grounds that it was obtained in violation of S.C. Code Ann. § 42-15-95(B), which states,

A health care provider who provides examination or treatment for any injury, disease, or condition for compensation is sought under the provisions of this title may discuss or communicate an employee’s medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys, or certified rehabilitation

professionals, or the commission without the employee's consent. The employee must be:

- (1) notified by the employer, carrier, or its representative requesting the discussion or communication with the healthcare provider in a timely fashion, in writing or orally, of the discussion or communication and may attend and participate. This notification must occur prior to the actual discussion or communication if the healthcare provider knows the discussion or communication will occur in the near future;
- (2) advised by the employer, carrier, or his representative requesting the discussion or communication with the healthcare provider of the nature of discussion or communication prior to the discussion or communication; and
- (3) **provided with a copy of the written questions at the same time the questions are submitted to the healthcare provider.** The employee must also be provided with a copy of the response by the healthcare provider.

Any discussion or communication must not conflict with or interfere with the employee's examination or treatment. S.C. Code Ann. § 42-15-95(B) (emphasis added).

Respondents sent a letter to Dr. Bethea attaching hundreds of pages of medical records on October 27, 2020, so that Dr. Bethea could review the necessary medical records and perform an independent medical evaluation. The letter included a copy of Appellant's complete medical records for review, a brief synopsis of Appellant's treatment to date, identification of specific medical issues/opinions to be addressed if Dr. Bethea agreed to perform the requested evaluation. (R. pp. 1054-1055). The letter asked Dr. Bethea to give his medical opinion on Appellant's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments. Dr. Bethea did not examine or meet with Appellant until December 17, 2020.

Nothing in Respondents' October 27, 2020, letter to Dr. Bethea could be construed as a "discussion or communication that would conflict with or interfere with the employee's examination or treatment," as set forth in S.C. Code Ann. § 42-15-95(B), which is the purpose of

the statute's limitation on unilateral communication with health care providers. In fact, the letter was sent to facilitate and assist Dr. Bethea with complete records for his examination.

Respondents acknowledge that once Dr. Bethea provided examination or treatment of Appellant, a statutory duty to notify Appellant and his attorney of the communication in advance and give them the opportunity to participate in any ongoing discussions or communications is triggered; however, that requirement does take effect until the doctor "provides" examination or treatment of Appellant, as stated in the clear and unambiguous language of § 42-15-95(B). Unless and until Dr. Bethea "provides" examination or treatment, the statute is not applicable. As such, Respondents' October 27, 2020, letter to Dr. Bethea was not a violation of § 42-15-95(B). If the legislature intended for this statute to apply to doctors who will provide an examination in the future or to apply in situations where independent medical examinations are being conducted, it could have easily stated this. However, the statute clearly states that it only applies to a "provider who provides examination or treatment...." Based upon the plain language of the statute, it only applies to providers who have provided examination or treatment, not providers who will or might at some point in the future or providers who do not examine or treat the injured worker at all.

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). If a statute's language is plain, unambiguous, and conveys a clear meaning "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

**C. Reliance upon *Brown v. Bi-Lo* is improper, and the Court of Appeals misunderstood and overlooked the amendments to section 42-15-95.**

In the decision, the Court of Appeals cites and relies upon the Supreme Court decision in *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 581 S.E.2d 836 (2003) regarding its interpretation of section 42-15-95 of the Act; the version of 42-15-95 reviewed by the Supreme Court in that case was amended by Act 468 in 1994. This reliance is misplaced, and Respondents assert that the Court of Appeals misunderstood and overlooked the fact that section 42-15-95 that applies in the instant case is a different version of the statute examined in *Brown v. Bi-Lo*.

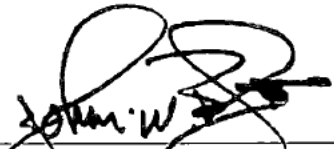
*Brown v. Bi-Lo* was decided by the SC Supreme Court in 2003. Notably, the Supreme Court stated that section 42-15-95 only contemplated the disclosure of existing written records and documentary materials, but that the statute did not authorize other “ex parte” methods of communication between an insurance carrier, employer, or their representatives and the health care provider. That version of 42-15-95 was passed by the legislature in 1994. However, section 42-15-95 at issue in this case was completely rewritten and passed by the legislature in 2007 specifically in response to this decision in *Brown v. Bi-Lo* and to provide a mechanism and roadmap for communications between a carrier, employer, or their representatives and the health care provider. 2007 Act. No. 111, Pt I, Section 29. The reasoning and logic of the Supreme Court’s decision in *Brown v. Bi-Lo* is no longer applicable since the version of 42-15-95 it examined no longer exists and was replaced by the current 42-15-95 which specifically addressed the issues/concerns raised by the Court in that decision. Section 42-15-95(B) as cited by the Court of Appeals in its decision did not even exist when *Brown v. Bi-Lo* was decided, and it was improper and imprudent to rely upon the holding in that case to examine the statute at issue in this matter.

The current iteration of section 42-15-95 which was passed in 2007 specifically to address the issues raised in *Brown v. Bi-Lo*. In that decision, the Supreme Court stated the statute did not authorize communications between a carrier, employer, or their representatives and a health care provider. The legislature amended 42-15-95 in 2007 to provide a mechanism for communication between a carrier, employer, or their representatives and the health care provider. That mechanism places certain requirements on a carrier or employer for communicating with any health care provider who provides examination and treatment for a workers' compensation claim. As fully stated above, that mechanism and its requirements and penalties do not apply to communications with health care providers who have not provided examination and treatment. Therefore, the Court of Appeals should have found that the letter to Dr. Bethea dated October 27, 2020, did not constitute a violation of section 42-15-95(B).

### **CONCLUSION**

For the foregoing reasons stated above, respondents request reconsideration and rehearing of "Section C. Admissibility of Evidence" in its prior order.

Respectfully Submitted,



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**ATTORNEYS FOR RESPONDENTS**

July 19, 2024

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**PROOF OF SERVICE**

I certify that I have served **Respondents' Petition for Rehearing and Reconsideration** by hand delivery on July 19, 2024, on the Honorable Jenny Abbott Kitchings, Clerk of Court of the South Carolina Court of Appeals at:

South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

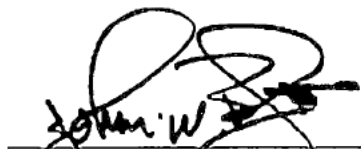
In addition, I certify that I have served the same on the all counsel of record for Appellant in the above-captioned claim on July 19, 2024, by email and U.S. Mail with first class postage at the following addresses:

Preston F. McDaniel, Esquire  
1315 Elmwood Ave.  
Columbia, SC 29201

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July 19, 2024  
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July 19, 2024

Sent Via Hand Delivery  
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South Carolina Court of Appeals  
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1220 Senate Street, Columbia, SC 29201  
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Re: Michael K. Crowley v. Darlington County  
Appellate Case No. 2022-000282

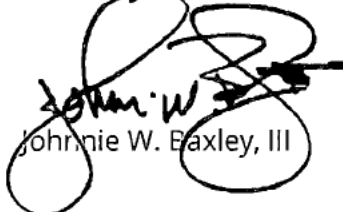
Dear the Honorable Ms. Kitchings:

Pursuant to Rules 221, SCACR, enclosed please find Respondents' Petition for Rehearing and Reconsideration, proof of service for the same, and the \$50.00 filing fee.

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

With kindest regards,

**Willson Jones Carter & Baxley, P.A.**



Johnnie W. Baxley, III

JWB  
Enclosures  
cc:

Mr. Preston F. McDaniel, Esquire (via email)  
Mr. Gerald Malloy, Esquire (via email)