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## STATEMENT OF THE CASE

The Petitioner in this case sustained admitted injuries to her low back and right and left arms, and alleged additional injuries to her neck, hips, and legs, all of which she contends occurred by accident arising out of and in the course of her employment with the Respondent Employer, NHC Homecare Midlands, in West Columbia, South Carolina on or about April 27, 2016. She further contended she was entitled to receive compensation and benefits under the South Carolina Workers' Compensation Act (hereinafter, "the Act"), including compensation for permanent and total disability due to more than 50% loss of use of her back.

The Respondents deny the Petitioner sustained injury to her neck, hips, legs, arms, and left wrist. Furthermore, the Respondents contend that the Petitioner did not sustain more than 50% loss of use of her back and therefore, Petitioner was not permanently and totally disabled as a result of her work-related injuries.

Regrettably, and prior to the hearing of this matter, the Petitioner passed away from metastatic lung cancer on February 23, 2021. A good-faith dependency evaluation was conducted by an expert provided by the Respondents, which determined that Petitioner's husband, Mr. Timothy Wilson, was the sole dependent under S.C. Code Ann. § 42-9-280.

A hearing to consider the issues presented by the Respondents' Form 21 and the Parties' respective Forms 50 and 51 was held before Commissioner R. Michael Campbell, II, on October 20, 2021, in Columbia, South Carolina. Following that hearing, Commissioner Campbell issued his Decision and Order for this matter and by which he found the Petitioner sustained greater than 50% loss of use of her back as a result of work-related injuries and concluded that the Petitioner was permanently and totally disabled. Commissioner Campbell additionally ordered that

the Respondents pay the commuted value of the difference between 500 weeks of compensation and 187 weeks of temporary total disability benefits paid to date, or \$184,089.75, to Mr. Wilson.

The Respondents appealed Commissioner Campbell's Order to the Full Commission, which reversed the Single Commissioner's Decision and Order and remanded the matter back to the Single Commissioner.

In that decision, the Appellate Panel set forth the following conclusions of law:

5. Pursuant to S.C. Code Ann. § 42-1-160 (1976), and other applicable law and regulation, the Claimant sustained an injury to her lower back, her arms and her psyche as a result of an accident arising out of and in the course of her employment with the Employer.

6. Pursuant to S.C. Code Ann. § 42-1-160 (1976), and other applicable law and regulation, the Claimant's neck has not been found to be compensable as part of this matter.

The Appellate Panel then issued the following order:

IT IS ORDERED that the Panel vacates the determination of disability to the Claimant's back, and remands this matter to the Hearing Commissioner for an analysis and determination of disability to the back as a result of the Claimant's admitted lower back injury.

The Petitioner then asked that the Panel reconsider its decision which was denied. The Petitioner then filed a Notice of Appeal of the Appellate Panel's Decision and Order, along with her Initial Brief. Thereafter, and contemporaneously with the filing of their Initial Brief, the Respondents filed a Motion to Dismiss this appeal on the basis that it is interlocutory and unappealable at this time.

On or about August 14, 2024, the Court of Appeals dismissed the Petitioner's appeal as interlocutory. After a Petition for Rehearing was denied, the Petitioner petitioned this Court for certiorari to review the decision of the Court of Appeals.

## ARGUMENT

### I. THE COURT OF APPEALS DID NOT ERR OR VIOLATE THE REQUIREMENTS AND PROVISIONS OF THE SOUTH CAROLINA CONSTITUTION BY DISMISSING THE APPEAL AS BEING INTERLOCUTORY.

The Court of Appeals did not ignore precedent in determining that the Full Commission Order was interlocutory and thereafter dismissing the appeal.

“Section 1–23–380(A) of the APA states a ‘preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.’” Hilton v. Flakeboard America Limited, 418 S.C. 245, 249, 791 S.E.2d 719, 721 (2016).

Petitioner relies on Hilton for the proposition that the Full Commission Order is immediately appealable. Notably, however, Chief Justice Pleicones’ opinion in Hilton stated that case presented “unusual facts.” Id. at 247, 791 S.E.2d at 720. This Court went on to state that

[u]nder these unique circumstances where the Commission has *ordered the relitigation* of the entire dispute without regard to the matters raised by the appealing party, we find that requiring Hilton to wait until the final agency decision to appeal would not provide him an adequate remedy.

Hilton at 250, 791 S.E.2d at 722 (emphasis added).

Here, the Full Commission merely ordered a remand to determine whether the Claimant’s admitted low back injury equated to a loss of use of greater than 50% to the back, and without regard to the alleged neck injury.

The Petitioner’s reliance on Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019) is equally misplaced. Russell dealt with a Claimant seeking benefits for a change of condition. The procedural history of Russell is much more complicated than the present case,

where the sole issue before the Commission is the award of permanent disability to the Claimant's dependent.

The present case does not contain "unusual facts" like Hilton. There has only been one contested hearing in this matter, which dealt solely with an award of permanency to a beneficiary other than the Claimant, who is deceased. There has only been one remand order issued. The Court of Appeals did not err in dismissing the appeal as interlocutory.

II. THE COURT OF APPEALS DID NOT ERR AS A MATTER OF LAW BY DISMISSING THE APPEAL AS BEING INTERLOCUTORY, AS THE DECISION OF THE FULL COMMISSION PANEL DID NOT CONSTITUTE A FINAL DECISION WITH RESPECT TO THE RIGHT OF THE PETITIONER TO PURSUE AN AWARD FOR LOSS OF USE OF THE BACK UNDER S.C. CODE ANN SECTION 42-9-30(21).

The Petitioner contends that the Order of the Full Commission operated as a "final decision" on the merits. This is not the case.

The Full Commission order provides that the neck has not been found to be a compensable body part in this case. The Single Commissioner's Order, without finding that the Claimant sustained an injury to her neck, combined the alleged injury to the Claimant's neck with the admitted injury to her low back in determining that the Claimant sustained greater than 50% loss of use to her entire back. The Full Commission, in reversing the Single Commissioner's Order, found that "the Claimant's neck has not been found to be compensable as part of this matter", and further ordered that the case would be remanded for "an analysis and determination of disability to the back as a result of the Claimant's admitted lower back injury."

In other words, on remand, the Petitioner now has the opportunity to prove greater than 50% loss of use to the whole back pursuant to S.C. Code Ann. Section 42-9-30 based solely on the admitted lower back injury.

The Respondents agree that the Workers' Compensation Act—specifically, Section 42-9-30(21)—does not delineate between low back, mid back, and upper back. However, this is not the issue in this case. Simply, the Single Commissioner failed to find as fact and conclude as a matter of law that the Claimant sustained injury by accident to her neck, and erred in using any reference to the Claimant's neck in his determination of permanent and total disability. The Full Commission correctly pointed out this error, and the Court of Appeals was right in dismissing the appeal.

III. THE COURT OF APPEALS DID NOT ERR BY GRANTING THE MOTION TO DISMISS, AS ANY DELAY THAT WILL RESULT IN THE FINAL DETERMINATION OF ANY BENEFITS DUE TO THE PETITIONER IN THIS MATTER IS ATTRIBUTABLE TO THE PETITIONER.

The Petitioner complains that the dismissal of the appeal has and will result in further delays in finally adjudicating this claim; however, instead of abiding by the remand order of the Full Commission, the Petitioner decided to appeal to the South Carolina Court of Appeals, and then again to the South Carolina Supreme Court. A review of the record shows that this appeals process has taken close to one year already. Surely, this matter could have been reset before the Single Commissioner, and the issues ruled upon, well before even the decision by the Court of Appeals.

As stated before, this matter does not contain the “unusual facts” found in Hilton, *supra*. There has only been one contested hearing and one appellate hearing, contrary to the procedural histories of Hilton and Russell.

The Court of Appeals, respectfully, was correct in dismissing the Petitioner's appeal.

## CONCLUSION

For these reasons, the Respondents respectfully assert that the Court of Appeals was correct in dismissing the Petitioner's appeal and upholding the order of the Full Commission.

Respectfully submitted,

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