

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from the  
South Carolina Workers' Compensation Commission  
Appellate Panel

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W.C.C. No. 1000075

Tracking No. 2012208069

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Martha Anne McDonald, Employee,

Respondent,

v.

Boys, Arnold & Company, Inc., Employer, and  
Hartford Insurance Co. of the Midwest, Carrier,

Appellants,

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**MOTION TO RECONSIDER**

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Pursuant to Rule 240, South Carolina Appellate Court Rules, the above-named Appellants, Boys, Arnold & Company, Inc. and Hartford Insurance Co., hereby respectfully move for this Court to reconsider its Order, filed December 3, 2012, dismissing this appeal on the basis that the order appealed from is not a final judgment. The basis of this motion is that the Court has misapprehended the nature of the order being appealed from and the lack of judicial review has left Appellants without an adequate remedy to protect its rights as it relates to the proceedings below.

**Background**

This appeal involves the partial settlement of a workers' compensation lien. Appellant was the workers' compensation carrier for Respondent's employer and paid workers' compensation benefits. Respondent also filed a third-party civil action for the

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same accident. Respondent reached a settlement with the third-party defendants and Appellants agreed to accept \$54,792.00 to resolve their then-existing lien for benefits paid to Respondent up to that point in the underlying workers' comp claim. This appeal involves the interpretation of a Consent Order by the South Carolina Worker's Compensation Commission ("Commission") approving the settlement of the lien with respect to the third-party settlement and the subrogation rights of Appellants.

The Consent Order at issue stated that Appellants accepted the sum "as full and final settlement of their third party subrogation lien." The parties subsequently disputed whether this agreement affected Appellants' right to seek subrogation against the settlement for any future payments made by Appellants subsequent to the settlement agreement.

On December 6, 2011, a single Commissioner issued an administrative order denying Appellant's Motion to Compel Claimant to Set Aside a Portion of Settlement Proceeds to Protect Defendants' Subrogation Lien. This order was issued four days after Appellants' filed the Motion and without affording the parties an opportunity to present any evidence or argument regarding the intent of the parties in negotiating the Consent Order. The administrative order, issued without an evidentiary hearing, held that the parties had previously negotiated and consummated a settlement that fully resolved Appellants' lien in the case. Appellant's sought review of this administrative order by the Appellate Panel of the Full Commission. In response, the Appellate Panel also issued an administrative order dismissing the appeal as interlocutory. The Appellate Panel's order was issued without affording the parties an opportunity to submit briefs or arguments on the issue.

Appellants filed a Notice of Appeal to the Court of Appeal. Respondent filed a motion to dismiss. On December 3, 2012, this Court issued an order (the “Order”) dismissing the appeal of the Appellate Panel’s decision on the basis that it was not a final judgment.

### Argument

In support of the Order, the Court cites to Bone v. U.S. Food Serv., Op. No. 27153 (S.C. Sup. Ct. filed Aug. 1, 2012)(Shearouse Adv. Sh. No. 26 at 113). As noted in Bone, the Administrative Procedures Act requires that appeals are generally limited to final judgments. Id. at 123. A “final judgment” is an order that “must dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce what has already been determined.” Id. at 121.

The court in Bone, however, addressed a situation where the order at issue affected the employee’s right to compensation and was, therefore, inherently a part of the underlying workers’ compensation case. As discussed by the court, a final decision on compensability “does not dispose of the entire action, because a ruling as to compensability, with nothing more (such as the claimant’s specific benefits and medical status), is not enforceable as it stands.” Bone at 121. In that context, the court reasoned that an order affecting only one aspect of the employee’s right to compensation was not a “final judgment” in the case since there remained other issues to be determined. The basis for the court’s decision was a desire not to have piecemeal and duplicative adjudications of matters involved in the underlying suit. Bone at 122 (“The procedure urged by Employer . . . would result in piecemeal appeals in agency cases that would adversely affect judicial economy and compromise informed appellate review.”).

In this case, the issue addressed by the Single Commissioner and dismissed by the Appellate Panel was not one involving the employee's rights to benefits under the Act. The question of Appellants' rights to subrogation does not require any further determination regarding the Respondent's underlying claim. Appellants' subrogation rights arise out of the South Carolina Workers' Compensation Act but are not a matter necessary to the adjudication of Respondent's entitlement to benefits under the Act. See S.C. Code. Ann. § 42-3-180 ("All questions arising under this Title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission..."); see also Laboureur v. Harleysville Mut. Ins., Co., 302 S.C. 540, 544, 397 S.E.2d 526, 529 (1990) (discussing the Commission's purview to determine coverage issues). There is, in essence, nothing left to do except to enforce the Single Commissioner's ruling that Appellant's have negotiated away any future rights to subrogation for any future benefits that may be paid to Respondent as part of her claim.

Ultimately, this Court's order dismissing the appeal as interlocutory effectively denies Appellants a venue for addressing the deprivation of their subrogation rights. The Single Commissioner, without taking evidence or argument, determined that Appellants' subrogation rights in the third-party settlement were extinguished by the Consent Order. The Appellate Panel, in denying an appeal of that determination effectively precludes any judicial review of the Single Commissioner's order during the pendency of Respondent's underlying comp claim. Based on the decision of the Single Commissioner, Respondent is under no obligation to preserve any portion of the third-party settlement in consideration of Appellants' future rights to subrogation in that settlement. Since Claimant's comp case is still pending, and future additional workers' comp benefits possibly will be paid to Respondent, Appellant's have no way of knowing when the

matter will be resolved. Moreover, depending on the length of time the case is open, the matter may be made effectively moot if the settlement funds are expended by Respondent prior to any adjudication of Appellants' rights to subrogation against those fund for any future benefits.

In short, the order of the Single Commissioner makes a final determination as to Appellants' ability to protect their rights in subrogation against Respondent's third-party recovery and, therefore, the instant appeal is not interlocutory. A dismissal of this appeal would effectively deny Appellants any forum in which to adjudicate their rights under the Act and would deny Appellants' of their due process rights under the United States and South Carolina Constitutions.

Respectfully submitted this, the 7<sup>th</sup> day of December, 2012.



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION APPELLATE PANEL

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Case No. 2012208069

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Martha Anne McDonald, .....Respondent,

v.

Boys, Arnold & Company, Inc., Employer, and  
Hartford Insurance Co. of the Midwest, Carrier. .... Appellants.

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**PROOF OF SERVICE**

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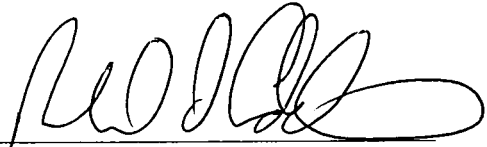
I certify that I have served the **Motion to Reconsider** by depositing a copy in the United States mail to the address below on this 7<sup>th</sup> day of December , 2012.

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December 7, 2012



# HEDRICK GARDNER

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ATTORNEYS AT LAW

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December 7, 2012

**Via hand-delivery**

Jenny Abbott Kitchings  
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**RE: Martha Anne McDonald v. Boys, Arnold & Company, Inc.**

**Case No.:** 2012208069  
**Claim No.:** YZE03710C  
**Our File No.:** 00013L.00091  
**Date of Injury:** 1/13/2010

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Defendants' *Motion to Reconsider* in regards to the above referenced matter. Also enclosed is a \$25.00 filing fee.

By copy of this letter to Plaintiff's counsel, I am serving him with a copy of this document as well. Should you have any questions or concerns, please do not hesitate to call.

Very sincerely yours,

R. Daniel Addison

/kmr

cc: Blake Hewitt  
William L. Smith  
S.C. Workers' Compensation Commission

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