

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

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W.C.C. No. 1000075

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Martha Anne McDonald, ..... Respondent,

v.

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

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RETURN

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AUG 16 2013

SOUTH CAROLINA COURT OF APPEALS

This return is filed pursuant to Rule 240(c) of the South Carolina Appellate Court Rules. This is a workers' compensation appeal. The Court dismissed this appeal based on a finding that the order the appellants have challenged is not immediately appealable. Because that decision is correct, this Court should deny the appellants' motion to reconsider.

**A. The Underlying Orders Are "Interlocutory."**

The dictionary definition of "interlocutory" is something that intervenes between the beginning and the end of a controversy and decides part of the case, but not the entire case. *Black's Law Dictionary* 731 (5th ed. 1979). This is different from a "final judgment," which is an order that puts a case out of court and leaves nothing left to be done but enforce by execution what has been already determined. *Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dep't of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 894-95

(2010) (citing *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 41-42, 21 S.E.2d 209, 212 (1942)).

The first order that the appellants want reviewed is an order that denies a motion to compel. After the motion to compel was denied by a single hearing commissioner, the appellate panel dismissed the appeal of that denial as interlocutory.

Both of these orders are interlocutory. The motion to compel has been decided, but Ms. McDonald's workers' compensation claim remains pending. In fact, regardless of how the commission ruled on the motion to compel, Ms. McDonald's claim would *still* be pending. These are not final orders. They do not put anybody out of court.

These circumstances are not materially distinguishable from the denial of any other intermediate motions in a case. For example, the Supreme Court has explained that an order denying a motion for summary judgment or a motion to dismiss does not *finally* decide anything. A party may raise any of the issues from such a motion at a later stage of the proceedings. *McLendon v. South Carolina Dep't of Highways and Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994). The Workers' Compensation Act contains a similar requirement of finality. The statute that authorizes an "appeal" to the appellate panel requires that the hearing commissioner have issued some kind of "award" before additional review is available. See S.C. Code Ann. § 42-17-50 (Supp. 2012).

There is nothing that prevents the appellants from re-raising the issues in their motion to compel at a later time. When the commission makes an award in this case, there is no reason why the appellants will not be able to argue these issues during their appeal of that award. The appellants could conceivably include the same arguments that they used in the

initial brief they filed with this Court, and when this case is remanded to the commission, they could conceivably re-raise this argument and include the argument that the commission should afford them a hearing.

The denial of a motion to compel is, by definition, interlocutory. The same is true of an order dismissing an appeal as interlocutory. This Court should reject the invitation to hold to the contrary.

**B. There Is No Reason this Order must Be Reviewed Now in Order for Appellate Review to Be Meaningful.**

The motion to compel was driven by the appellants' claim that they are entitled to assert a lien against settlement money Ms. McDonald may receive from a civil lawsuit. The hearing commissioner denied the motion to compel because it found that the commission previously issued a consent order in which the appellants waived their lien.

This issue does not need to be reviewed now in order for appellate review to be meaningful. Consider the situation of an employer that contests whether an injury is compensable. The employer may disagree with the finding that there has been a compensable injury, but the employer is nevertheless required to pay benefits to the employee while the case is pending. See S.C. Code Ann. § 42-17-60 (noting that an appeal does not stay an award); see also *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 530-34, 115 S.E.2d 57, 66-68 (1960) (same). If the employer ultimately wins and the case is found to *not* be compensable, the employer can vindicate its rights by pursuing a claim against the employee for any benefits it paid. See *Moore v. N. Am. Van Lines*, 319 S.C. 446, 462 S.E.2d 275 (1995).

The appellants are in roughly the same position. This claim against Ms. McDonald will be no less valid (or invalid) when it is reviewed later—after the commission issues an award.

Holding the appeal of this issue until a later time allows for the possibility that the issue will become irrelevant or will be resolved by agreement of the parties. This is why administrative appeals are generally limited to final judgments. Holding most appeals over until the end is designed to present all of the issues in a case in a single sitting. If this issue is not resolved by the time of an award, the validity of the appellants' claimed lien can be reviewed whenever the commission makes an award and someone appeals it.

#### CONCLUSION

The order the appellants have appealed is not a “final judgment.” It is also not an “award,” and it does not appear to be an intermediate order for which review after the final judgment will not provide an adequate remedy. The decision to dismiss this appeal was the correct decision.

August 16, 2013

Respectfully submitted,



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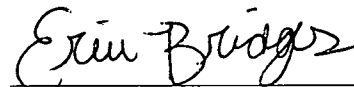
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The undersigned hereby certifies that on the date indicated below she served  
counsel for the Appellants with a copy of the *Return* by mailing copies of the same by  
United States Mail with first class postage prepaid to the following address:

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