

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE
SC WORKERS' COMPENSATION COMMISSION

(Order filed July 20, 2026
SC Court of Appeals Case No. 2023-000187)

RECEIVED

AUG 03 2026

S.C. SUPREME COURT

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and
State Accident Fund, Carrier,

In Re: Attorney's Fee Petition of
Preston F. McDaniel, Esquire, and
John M. Milling, Esquire Petitioners,

v.

SC Workers' Compensation Commission Respondent.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certify that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on July 20, 2026.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err by making the Employer and the Insurance Company a "party" to the contract between the Claimant and her attorneys and a "party" to the separate and distinct Attorney's Fee Petition approval action required by Statute and Regulation and dismissing Appellants' appeal because they were not served as a "party" to that action?
- II. Did the Court of Appeals err as a matter of law by dismissing the appeal on the basis that the Commission acted "solely" in a "judicial" capacity and is not the proper party to the appeal?
- III. Did the Court of Appeals' Decision finding that the Commission is not the proper party Respondent violate the SC Constitution's Article V, §9 wherein the decision of the Supreme Court shall bind the Court of Appeals precedent?
- IV. Did the Court of Appeals' Opinion finding that the Commission's Decision is a judicial Decision thus granting to the Commission an administrative agency judicial discretion in reference to the approval of attorney's fees violates the cardinal rule of statutory construction?

STATEMENT OF THE CASE

On March 26, 2014, the Petitioners entered into a contract with Ms. Pamela Cartee to represent her in her workers' compensation claim. (ROA p. 249). Immediately upon retention, Petitioners obtained an increase of \$184.02 per week in the compensation rate from \$514.29 to \$698.41. In weekly compensation and the final total and permanent disability (PTD) Award, resulted in increased compensation to the Claimant of \$92,010.00. At the time of the possible total value of the claim was \$257,195.00, whereas through Petitioners' efforts, in weekly compensation benefits under the PTD Award, made and assuming full payment of the attorneys' fees requested for approval out of the final Award, Ms. Cartee received \$266,243.57. (ROA p. 268).

Also after the contract with Ms. Cartee, Petitioners were able to add the back and psychological, to the injury and then obtained a final Award on April 13, 2017 for permanent and total disability with accompanying lifetime causally related medical care. (ROA pp. 4-28). In the Award, the Commissioner found the Claimant reached maximum medical improvement on October 12, 2016; awarded PTD as of that date and ordered continuation of \$698.41 weekly compensation benefits under the PTD Award until calculation of and the Claimant's entitlement to a lump sum payment of the remaining Award. (ROA pp. 26-27). Defendants appealed the Order which was affirmed by the Full Commission on October 17, 2017.

(ROA p. 29).

Subsequent to payment of the Commission Award by the Defendants to the workers' compensation claim, on December 12, 2017, the Defendants in and to the "claim" filed the WCC Form 19 which is the form that officially closes and ends the underlying workers' compensation "claim" at the Commission. Petitioners after disbursement to their client pursuant to statute and Commission Regulation filed a SCWCC Form 61 "Attorney Fee Petition" and a Form 61A "ATTORNEY FEE PETITION SUPPLEMENTAL INFORMATION", an itemized disbursement statement and proposed Order for approval on December 8, 2017. (ROA pp. 249-251; pp. 247-252). Very important to this Petition for a Writ of Certiorari, the Attorney Fee Petition per Regulation was filed with the Commission's Claims Department, not the Judicial Department, who sent it to the Commissioner for approval December 11, 2017. (ROA p. 253). Also very important to this Petition, the Fee Petition submitted by the Petitioners was uncontested and was identical to numerous other Fee Petitions submitted by Petitioner Preston F. McDaniel. (Affidavit, ROA pp. 169-175).

A Statement of the Case detailing the actions that occurred following the Commissioner's failure to immediately approve the attorneys' fees as required by Regulation is set out in the Brief of Appellants and the DJ Amended Complaint. (Appellants' Brief, pp. 6-8; Amended Complaint pp. 176-217).

On April 17, 2018, four months after the Commissioner's failure to make an "immediate" decision as required by Regulation on the undisputed Fee Petition, Petitioners filed a Declaratory Judgment Action, the caption of which, ROA p. 176, is extremely important to this Petition:

Preston F. McDaniel and John M. Milling,
Plaintiffs, v. SC Workers' Compensation
Commission, Defendant, In Re: SC Workers'
Compensation Commission, WCC File No. 1307922.

A Temporary Restraining Order was lifted to allow the Full Commission to hear Petitioners' appeal. The Full Commission 4-2 affirmed the Hearing Commissioner and Petitioners filed both a Notice of Intent to Appeal with the Court of Appeals (COA), and an Amended and Supplemental Complaint in the Declaratory Judgment action. Petitioners filed a Motion with the COA to be allowed to dismiss the appeal. By Order of the Court, Appellants were allowed to "withdraw" the appeal and it was dismissed pursuant to Rule 260(c), SCACR. Important to this Petition, the parties listed in that appeal are:

Preston F. McDaniel, Esquire and John M.
Milling, Esquire, Appellants, and the SC
Workers' Compensation Commission,
Respondent.

The only "parties" served with that Order and involved in that dismissed appeal were Petitioners; General Counsel for the SC Workers' Compensation Commission; and the SC Attorney General's office who was representing the Commission as a party at that

time.

After Motions including a Motion to Dismiss, denied, in the Declaratory Judgment action and after the Circuit Court granted Petitioners full discovery, including depositions of the Commissioners and to subpoena all Commission records, the "parties" agreed to mediate that case. At mediation, an agreement was reached wherein Petitioners agreed to dismiss the Declaratory Judgment action with prejudice and in exchange the Commission would properly serve the original Order, which was refiled/served June 6, 2022 (ROA p. 75), and hear a new Motion for Rehearing filed June 10th. (ROA p. 158). That Motion for Rehearing was denied January 4, 2023.

Pertinent and very important to this Petition, the Petitioners filed a Notice of Intent to Appeal captioned as was the Declaratory Judgment action:

Preston F. McDaniel, Esquire and John M. Milling, Esquire, Appellants, v. SC Workers' Compensation Commission, Respondent, In Re: the matter of the Fee Petition in WCC File No. 1307922.

As with the Declaratory Judgment action, the parties to the appeal and specifically the Respondent, Commission, served with the Notice being served on the Judicial Director (Agency) and its Attorneys of Record (Party-Respondent), General Counsel J. Keith Roberts, Esquire.

Then the Court of Appeals Clerk's office by letter

J

recaptioned the appeal. After a February 22, 2023 letter challenging the recaptioning and raising privacy concerns for non-parties, Petitioners filed a Motion to Determine the correct caption. (App. ltr., 02/22/23; Motion, 03/13/23).

Importantly to this Petition, the Respondent SC Workers' Compensation Commission through their Counsel J. Keith Roberts filed a Motion to Dismiss the Respondent and to be relieved as Counsel. That Motion was served only on Petitioners Preston F. McDaniel, Esquire and John M. Milling, Esquire, Appellants before the COA. (Motion to Dismiss w/ certificate, 03/21/23). In the Motion the Respondent raised the same exact arguments that were made later raised in Brief to the Court of Appeals and in the Petition to this Court (See Respondent's Petition for Writ of Certiorari, 09/29/23), including that the Commission was acting in a judicial capacity; that it was not a party to the workers' compensation claim; and was not a proper party. Petitioners on March 29, 2023 filed a Return and made the same exact arguments that have been made throughout, that the Commission is the party charged under SC law, §42-15-90 with the approval of attorney's fees, and that under the decisions of this Court the Commission could only exercise that authority, an administrative function, pursuant to Regulations adopted as required by §42-3-185. By Order dated May 26, 2023, Chief Judge H. Bruce Williams denied Respondent's Motion. Respondent then moved to substitute Counsel

and to Stay the Appeal due to the filing of a Motion by the Respondent Commission for a Writ of Certification from the SC Supreme Court. (Motion to Stay, 08/29/23). One of the specific bases raised in and quoting from the Petition was:

"Appellants have improperly named the Commission as the Respondent in this appeal. As a party, the Commission is now required to defend its own judicial decision on appeal. Moreover, Appellants named the Commission's General Counsel and Staff Attorney as Counsel-of-Record in the Notice of Appeal. Both of the attorneys are court personnel who acted as judicial law clerks for the Commission." (Sup. Ct. records). (Emp. add.)

Note: J. Keith Roberts filed the Motion to Dismiss in the Court of Appeals as Counsel for the Commission as Respondent. This Court denied the Respondent's Motion for Certification. (Order, 10/24/23). In reference to both the Motion to Stay and the Motion for Certification, Petitioners made the same argument that the SC Workers' Compensation Commission had the administrative responsibility to approve or disapprove physician, medical providers and attorney fees pursuant to its Regulations and cited a case directly on point in which the Commission was the Respondent in reference to approval of fees under the statutes and Regulations. (Return, p. 3, 09/11/23; Return to Motion for Certification, pp. 5-7, 09/28/23).

Briefing in the Court of Appeals continued with the Respondent filing their Final Brief in January. On the same day January 8, 2024, Appellants filed their Final Brief and Final

Reply Brief; and also Chief Judge H. Bruce Williams filed his Order denying Respondent's original Motion to hold the appeal in abeyance pending a decision on their Writ of Certiorari and denied Respondent's Motion to Take Judicial Notice of excerpts from the Record on Appeal of an unrelated case. A review of the Respondent's Final Brief will reveal that without filing a cross-appeal or listing as additional sustaining grounds and nonresponsive to the issues raised on appeal, under Argument I Respondent raised the same issue that the Commission was not the proper party that had been raised in their COA Motion to Dismiss, before the Circuit Court and before this Court in their Motion for Certification.¹

Thereafter, almost fifteen (15) months later, the matter was set on March 3rd for oral argument before the Court of Appeals. Two weeks prior to that, the parties were notified the case would be decided on the Briefs and Record.

On May 13, 2026, the COA Panel issued an Order dismissing the appeal on two bases. First, the Commission was not a proper party to the appeal because it was not a party to the proceedings below and second, acted in a judicial capacity. In the Panel's analysis on the first basis, while the Panel refers to SC Code §42-15-90(A) which grants the Commission the authority and is the party over

¹Note: although the Order denied the inclusion of the excerpts from another action, Respondent on p. 12 of their Brief included in argument those excerpts.

approval of doctors, medical providers, hospitals, and attorneys' fees, there is no reference to SC Code §42-3-185 which mandates that any policies and procedures implementing §42-15-90 shall only become effective when such implementation is accompanied by Regulations promulgated pursuant to that Code Section. There is no reference to this Court's seminal decision in reference to the sanctity of the attorney/client fee contract and the exception created by the Workers' Compensation Act or that the Commission has absolutely no authority to approve or disapprove attorney fees until those Regulations were adopted. Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1995).

The second basis was that the employer and carrier in the underlying workers' compensation claim are parties to this appeal from the separate approval or disapproval of attorney's fees action based on the separate attorney fee petition required by law to be filed with the Commission. The Order holds the employer and carrier are proper parties and are required parties to be served in reference to the Attorney Fee Petition which is based upon the original contract between the attorney and the attorney's(ies') client. There is no reference in this part of the Order and analysis citing any workers' compensation statute or workers' compensation Regulation making the employer and carrier a party to the contract or a party to the separate Petition required by law to be filed by the attorney requesting approval by the Commission

of their attorney's fee.

A Petition for Rehearing and Rehearing En Banc due to the importance of the issues to the Appellants and Claimants Bar was filed and the Court required the Respondent to file a Return to the Petition. (Petition, 05/28/26; Return, 06/19/26). A Reply was also filed to the Return. (Reply to Return to Petition for Rehearing and Rehearing En Banc, 06/23/26). The Order of the Court of Appeals denying the Petition for Rehearing and Rehearing En Banc was filed July 20, 2026, resulting in this Petition for a Writ of Certiorari being filed.

STATEMENT OF FACTS

An accurate statement of necessary facts is contained in Appellant's Court of Appeals Final Brief (pp. 11-15) and in the Amended Declaratory Judgement action (ROA pp. 178-217).

ARGUMENTS

- I. **THE COURT OF APPEALS ERRED BY MAKING THE EMPLOYER AND THE INSURANCE COMPANY A "PARTY" TO THE CONTRACT BETWEEN THE CLAIMANT AND HER ATTORNEYS AND A "PARTY" TO THE SEPARATE AND DISTINCT ATTORNEY'S FEE PETITION APPROVAL ACTION REQUIRED BY STATUTE AND REGULATION AND DISMISSING APPELLANTS' APPEAL BECAUSE THEY WERE NOT SERVED AS A "PARTY" TO THAT ACTION.**

The employer and insurance carrier are simply not a party to the contract entered into by and between a claimant and their attorney(ies) which contract is a condition precedent to the Commission exercising any approval authority under law. In a workers' compensation claim, there are two or three "parties" to

a claim defined in the Act. The "employee", SC Code §42-1-130; the "employer", SC Code §42-1-140; and in most claims a "carrier" or "insurer", SC Code §42-1-60. A claimant is not required to have an attorney and attorneys are not "parties" to the claim. They are "parties" to their attorney-client contracts.

The "Commission" is defined in SC Code §42-1-90 and means the administrative department in matters relating to "administration" and judicial department in matters relating to a "judicial function". SC Code §42-15-90, under the State's police powers, creates a reasonable intervention into that contract between the "parties", i.e., the claimant and their attorney(ies) concerning attorney's fees. It provides in pertinent part under §42-15-90(A):

"Attorney's fees, ... for services under this title are subject to the approval of the Commission, ...". (Emp. add.)

The statute lists two parties, the attorneys who must have their fees approved and the Commission who must approve or disapprove the fees requested. SC Code §42-3-185 further requires that any procedures by the Commission concerning approval of fees "shall" only become effective after and when "accomplished" by Regulations that have received the approval of the General Assembly.

In Bazzle v. Huff, supra, this Court held that without specific Regulations the Commission had no jurisdiction, "to affect the private rights between attorney and client". Bazzle involved a "disputed" fee situation between the attorney and client and a review of the Appellate Record in this Court's library and the USC School of Law will confirm that only the Respondent Mr. Huff and the Commission were served with the Notice of Intent to Appeal. In this case like Bazzle, the "employer" and its "carrier" were not served because they are not parties to the attorney fee petition approval action. They are parties to the separate and distinct workers' compensation claim from which this is not an appeal.

As wrongly set out in the Court of Appeals Panel's decision, the Appellants never argued that the "employer" and "carrier" were not proper parties to this action because they did not contest the fees requested. They are not parties because they are not parties to the fee approval action either in the statute or the Regulations and are not listed nor even mentioned as parties in either. As stated in Bazzle, they have no right "to affect the private contract rights between attorney and client".

As for Ms. Cartee, while not really argued by the Commission Respondent or the Appellants to the Court of Appeals, Ms. Cartee by statute and Regulation is not a party to an

"uncontested" fee approval request filed with the Commission.

As noted, the approval statute mentions two parties; the Commission charged with approval and the attorneys requesting approval.² As held in Bazzle, the Commission has no authority outside of the strict authority granted to it in the Regulations as approved by the General Assembly.

Those Regulations provide for two separate and distinct procedures: 1) where the fees requested for approval are not "disputed" by the claimant, and 2) where the fees are "disputed" by the claimant. In an uncontested/undisputed fee petition request where the claimant and their attorney have entered into a written contingency fee contract when the claimant acknowledges the agreement was fully explained to the claimant and agrees to the fee requested by signing a Commission Form 61 and where the attorney has calculated the fee in accordance with Regulations, WCC Reg. 1204-1205, the "fee is deemed reasonable".
Note: Regulations contain no notice to nor even that the claimant be sent a copy of anything where they sign a Form 61 and agree to the fee requested.

On the other hand, if the claimant refuses to sign a Form 61, that is to say "disputes" the fee, only then is a hearing set to decide the issue. There the Commission hears the

² While not thought of in the same way, under the Act this is the same situation as where a doctor or hospital requests approval of a bill in accordance with the medical fee schedule and it is not disputed and is paid.

"dispute" between the "parties", the attorney and their client as in Bazzle. SCWCC Reg. 67-1205(D). However, even then the Commission is limited to the Regulations.

II. THE COURT OF APPEALS ERRED AS A MATTER OF LAW BY DISMISSING THE APPEAL ON THE BASIS THAT THE COMMISSION ACTED "SOLELY" IN A "JUDICIAL" CAPACITY AND IS NOT THE PROPER PARTY TO THE APPEAL.

This appeal does not involve "contested cases" nor does it involve a "disputed" matter. Herein lies the fundamental lack of understanding and fallacy in Respondent's position and the decision by the Court of Appeals Panel.

The Court of Appeals appropriately sets out that SC Code §42-1-90 and §42-3-10 establishes the statutory creation of and that the Commission is composed of both a judicial and administrative department. Under the definition of "Commission", §42-1-90 makes it clear that the Commission acts in its administrative capacity relating to matters of administration and in its judicial capacity in reference to the judicial functions of the Commission. The Court then cites and herein lies the beginning of the fallacy and false premise from the statutory authority of the Commission under SC Code §42-3-20(B) and quoting in pertinent part from that section, which applies to this appeal that the Commission has the responsibility to "hear and determine all contested cases ...". (Emp. add.)

The parties to a claim, that being the employee, the employer, and in most cases its insurer are defined in the Act, SC Code §42-1-130, 140 and 60, respectively. Under §42-17-20 if the "employer" and "employee" cannot agree to acceptance of the claim and payment of compensation

"either party may make application to the Commission for a hearing in regard to the matters at issue and for a ruling thereon ...". (Emp. add.)

SC Code §42-17-40 provides that:

"the Commission or any member of the Commission shall hear the parties and shall determine the dispute in a summary matter". (Emp. add.)

If either party, meaning the "employee" or the "employer" and if applicable its insurance "carrier", are dissatisfied they may file an appeal to the Full Commission under §42-17-50.

If one of the parties is dissatisfied with the Full Commission decision, SC Code §42-17-60 provides that either party to the "dispute" may appeal to the Court of Appeals. The key is that the parties to the "dispute" or to the "contested" matter may appeal. Here, there was no dispute or contest between the parties to the fee contract entered into by and between the Appellants and their client, the claimant, in her workers' compensation claim concerning the fee as requested by Appellants for approval. (ROA p. 274).

Again, an entirely separate code section provides an exception to the sanctity of the contract between the claimant and her attorneys and quoting from SC Code §42-15-90(A) in pertinent part:

"Attorney's fees, ... for services under this Title are subject to the approval of the Commission ...".

The General Assembly added to that the requirements that the Commission's approval authority be limited to specific Regulations adopted in accordance with SC Code §42-3-185 and provides that the Commission's authority only becomes effective where such implementation is accomplished pursuant to those Regulations that had been previously approved by the House and Senate Judiciary Committees and by concurrent resolution of the General Assembly.

This Court's decision in Bazzle v. Huff, supra, is extremely important and is controlling and clearly establishes the fallacy of the Court of Appeals Panel's ruling and the position of the Respondent upon which it is based. First, in Bazzle this Court recognized and found that without the adoption of the Regulations approved by the General Assembly, the Commission had no authority to approve or disapprove attorney's fees. Thus establishing that the Commission's authority is controlled by and limited to the authority granted by the Regulations. Next, yes in Bazzle, the Commission acted in a

judicial capacity because there was a dispute to the attorney fee contract, that being between the claimant and her attorney. So, in accordance with the statute and Regulations, when there is a "dispute" between the parties to the fee contract the Commission acts in its judicial capacity to determine the dispute. The Court also recognized in its ruling specifically the sanctity of the attorney-client contract and that this was an exception created by statute and that it should be strictly and narrowly construed. It is very clear that this Court intended to recognize the very limited authority and grant no more authority to the Commission than as is set out in the Regulations which is in accordance with the legislative intent.

Lastly, in making its decision in Bazzle v. Huff, supra, the Court cites as the precedent for the proposition that an administrative agency has only such powers as are conferred by law and must act within its authority, its decision in Triska v. Dept. of Health & Env. Control, 292 S.C. 190, 355 S.E.2d 531 (1987). Triska involved the approval or disapproval of a water quality certificate by the Department of Health and Environmental Control and the named "parties" were Mr. Triska and the Department of Health and Environmental Control because it was the "party" charged with the responsibility of approval or disapproval. In every case decided by this Court where the action involves the approval or disapproval by an administrative

agency of a fee, license, permit, etc., the administrative agency charged with approval or disapproval is a named party. Just a few of this Court's Opinions will be set out here. US Outdoor Advertising Inc. v. SC Dept. of Transportation, 324 S.C. 1, 481 S.E.2d 112 (1997) (approval of a license); SC Coastal Conservation League v. SC Dept. of Health & Env. Control, 390 S.C. 418, 702 S.E.2d 246 (2010) (approval of environmental permit); Stono River Env. Protection Ass'n v. SC Dept. of Health & Env. Control, 305 S.C. 90, 406 S.E.2d 340 (1991) (approval or disapproval of a water quality certificate). SC Ambulatory Surgery Center Assn. v. SC Workers' Compensation Commission, 389 S.C. 380, 699 S.E.2d 146 (2010), reh. den. (\$42-15-90 medical fees subject to approval by Commission). The plethora of cases the Court of Appeals has decided concerning the approval/disapproval of fees, permits, and licenses in which the state agency involved is the named "party", will not be set out here.

The Regulations concerning the approval of attorney's fees approved by the General Assembly set out the provisions and procedures to be followed in reference to where there is no "dispute" between the parties to the fee contract, and where there is a "dispute" between the parties. SCWCC Reg. 67-1204(C) provides that when the fee requested is based on a contingency fee contract the attorney is to file a Form 61 Attorney Fee Petition and an Order along with a stamped, self-addressed

envelope with the Commission's "Claims Department". Reg. 67-1205(B)(1-3) provides for an "undisputed" fee request which is set out on the Form 61 which is that the attorney has fully explained the fee agreement to the claimant, the claimant is advised of the full dollar amount and the claimant "agrees to the fee by signing a completed Form 61". There was no dispute between Ms. Pam Cartee and her attorneys, and thus this was an "undisputed" fee approval situation. The only subsequent dispute is between the attorneys and the Commission arising out of the approval process over whether the Commission under the Regulation properly denied part of the attorneys' fees requested. This is simply a question of law and the parties to the "dispute" are the SC Workers' Compensation Commission and Petitioners. Because there was no "dispute", the Commission did not act in a judicial capacity or at least did not make a judicial decision "deciding" the issues in "dispute".

On a final note, the Record establishes that after submission of the Attorney Fee Petition and having heard nothing for a month from the Commission during which three personal attempts, numerous emails, and phone calls were made to the Commissioner concerning the status, the Commissioner simply issued an email denying part of the fee requested. (ROA pp. 247-271, 276). There was no dispute between any parties and no contested hearing. Thus this appeal simply involves the

Commission as a party in its responsibility to approve attorney's fees and the Petitioners, who are the attorneys who submitted the undisputed fee petition to the Commission for approval in accordance with the Regulations. Therein lies the issue: whether the Petitioners are correct in their interpretation or the current Commission is correct in its interpretation; a question of law between those parties.

III. SINCE THE COURT OF APPEALS' DECISION FINDING THAT THE COMMISSION IS NOT THE PARTY RESPONDENT IS CONTRARY TO THE DECISIONS OF THIS COURT, IT VIOLATES SC CONSTITUTION ARTICLE V, §9 WHEREIN THE DECISIONS OF THE SUPREME COURT SHALL BIND THE COURT OF APPEALS AS PRECEDENT.

The SC Constitution, Article V, §9 provides that the decisions of this Court, the Supreme Court for South Carolina, binds the Court of Appeals as precedent.

In SC Ambulatory Surgery Center Assn. v. SC Workers' Compensation Commission, supra, as a fundamental maxim and foundation to that decision, this Court recited in its decision and in footnote 1 that under the SC Workers' Compensation Act the fees of attorneys, physicians, and hospitals are subject to submission to and approval by the Commission under SC Code §42-15-90 (1985).

Further, it is uncontested in this case that the submission of the Fee Petition for approval by the Commission which is the subject of this appeal, involved the submission of an "undisputed", "uncontested" Fee Petition. In SC Ambulatory

Surgery Center Ass'n in holding that the case did not involve a "contested case" situation, the Court cited to its previous decision in Triska v. Dept. of Health & Env. Control, supra, recognizing that there is no "contested case" when there is no dispute.

The Court also references the Triska decision in Bazzle v. Huff, supra, for the proposition that an administrative agency has only certain powers as have been conferred by law and must act within the authority granted for that purpose. In Bazzle, this Court noted that the Commission under §42-15-90 is charged with the responsibility and is the party to approve or disapprove attorney's fees but that the authority of the Commission to regulate attorney's fees intrudes upon the sanctity of contract and the Commission's authority was further strictly limited by the General Assembly under §42-3-185 to the Regulations adopted pursuant to that Code Section as approved by the General Assembly. Thus, in two separate Opinions this Court has held that the Commission is the party charged with approving attorneys' fees under the Act.

The Appellants would submit that the holding of the Court of Appeals that the Commission is not the proper party Respondent in this matter, an appeal of an "uncontested" fee petition submitted for approval by the Commission is contrary to the holdings of this Court in those two precedents..

IV. THE COURT OF APPEALS' OPINION FINDING THAT THE COMMISSION'S DECISION IS A JUDICIAL DECISION THUS GRANTING TO THE COMMISSION AN ADMINISTRATIVE AGENCY JUDICIAL DISCRETION IN REFERENCE TO THE APPROVAL OF ATTORNEY'S FEES VIOLATES THE CARDINAL RULE OF STATUTORY CONSTRUCTION.

Under SC Code §42-15-90 the Commission is given the authority to approve attorney's fees. In Bazzle v. Huff, due to the Legislation's further restrictions on that authority contained in SC Code §42-3-185 requiring the Commission to adopt Regulations, this Court held that without such Regulations the Commission had no authority to approve or disapprove attorney's fees. In both Bazzle v. Huff, supra, and SC Ambulatory Surgery Center Assn. v. SC Workers' Compensation Commission, supra, this Court noted that the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. (Emp. add.) In its holding in SC Ambulatory Surgery Center Assn., the Court reiterated that its decision should not be interpreted as giving the Commission "unfettered authority" in reference to its authority to approve fees under §42-15-90. The Court stated that it did not intend by its decision in SC Ambulatory Surgery Center Assn. to provide state agencies with unlimited authority. The Court then reiterated its decision in Bazzle v. Huff that an administrative agency only has such powers as had been conferred by law and must act within the authority granted for that purpose. The Commission is not a Judge or Court, it is an administrative agency with quasi-judicial powers that has both

an administrative and a judicial side. In this appeal we are dealing with a Petition for the approval of attorney's fees which was uncontested and undisputed. Thus, there is no contested case or dispute and to change the decision in this uncontested matter to a judicial decision in a contested or disputed matter thus covering the Commission with the blanket of judicial discretion places the party opposing the decision under the burden of having to show an abuse of discretion versus simply an error of law or regulatory violation and is contrary to the cardinal rule of statutory construction and the intent of the legislature and this Court to strictly limit the authority of the Commission to approve or disapprove attorney's fees. This dispute is really simply a matter of law as to whose interpretation of the Regulation under which the "undisputed" attorney's fee petition in this appeal submitted for approval is correct: the Commission as the party charged with the responsibility to approve or disapprove attorney's fees or the attorneys as the party(ies) who are required by law to submit their attorney fee petition to the Commission for approval.

CONCLUSION

For the foregoing reasons, the Court should grant the Writ of Certiorari and reverse the Court of Appeals holding that the Commission is not the party Respondent in this uncontested fee petition for approval of attorneys fees action. The Court should

hold that where an attorney submits a fee petition for approval which is uncontested/undisputed, the parties to that action are the Commission; the party charged with approving the fee requested and the attorneys requesting approval. Where the fee is disputed between the parties' contract, the claimant and attorneys, they are the parties to that dispute and the Commission acts in a judicial capacity to determine the "dispute".

The Court should also make it clear that the employer or its insurance carrier are not parties to the statutorily required approval of attorney's fees action, the Court should then decide the correct interpretation of the Regulation under law.

Respectfully submitted,


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