

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission SC Court of Appeals
Appellate Panel

Appellate Case No. 2023-000187

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,Appellants,

v.

SC Workers' Compensation Commission,Respondent.

RECORD ON APPEAL

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ORDER AND AWARD

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1307922

PAMELA O. CARTEE,

Employee/Claimant,

v.

S.C. JUDICIAL DEPARTMENT

Employer,

and

STATE ACCIDENT FUND,

Carrier,

Defendant(s).

HEARING:	September 6, 2016
Location:	Goose Creek, South Carolina
APPEARANCES:	Claimant represented by Preston F. McDaniel, Esquire
	Defendant(s) represented by Sarah Alphin, Attorney
PURPOSE OF HEARING:	To determine issues as set forth On Forms 50 and 51
COMMISSIONER:	Commissioner Gene McCaskill
FILED:	April 13, 2017

STIPULATIONS

The parties stipulated to jurisdiction and venue and at the mediation agreed to an average weekly wage of \$1,047.56 with a resulting compensation rate of \$698.41.

The Commission file with the exception of self-serving declarations and unstipulated medicals is made a part of the Record.

STATEMENT OF THE CASE

At the time for the hearing pursuant to the Administrative Procedures Act and the Rules of this Commission records, reports and documents from the following were made a part of the Record: Dr. Joseph R. Healy, MD; Dr. Patrick J. Goldsmith, Ed.D.; Ms. Tracy Hill, Registered Physical Therapist/FCE, Columbia Rehabilitation Clinic; Dr. Phillip C. Moore, MD, Carolina Hospital Systems/ESI's; Dr. Nancy Lembo, Carolina Spine and Sports Rehabilitation Specialists; Dr. Anthony Capito; Dr. Michael Ugino and Dr. Ryan Wetzels, Midlands Orthopaedics; Drs. Neal Goldberger, Robert Nantias, and Dr. Chason S. Hayes; Leslie Ware, C-P.A., Carolina Bone & Joint; records from the South Carolina Retirement System; 2011 and 2012 IRS records; photographs; Social Security correspondence; documents/correspondence to/from State Accident Fund; AWW Summary/State Retirement Federal Tax Form 2012; itemized medical bills/pharmacy bills; Loew's Physical Therapy; Palmetto Health Toumey; Ms. Julie Bowers, FNP, Catawba Family Medicine; North

Carolina Diagnostic Imaging; and Dr. Charles H. Hughes, MD. In addition to the medical records, reports and documents that were placed into evidence, the deposition of Dr. Nancy Lembo, DO taken August 8, 2016 and the deposition of Dr. Robert Joseph Healy, MD taken November 8, 2016 were made a part of the Record.

By way of procedural history and pursuant to the Commission Record and the pleadings filed by the parties, the Claimant requested a hearing on August 17, 2015. A Form 51 was filed and based on the position of the Claimant that she was totally and permanently disabled, this matter was referred to mediation pursuant to the Mediation Rules. Subsequently at the request of the Claimant, this matter was set for hearing on December 16, 2015. In her Pre-Hearing Brief the Claimant asserted that the 60-day mandatory mediation time for mediation had run and there had been no response from the Defendants on the conduction of mediation. Both in the Defendants' Pre-Hearing Brief and in an Amended Pre-Hearing Brief, filed December 15, 2015, the Defendants took the position that the Claimant was not at maximum medical improvement and that the claim was not subject to mandatory mediation. The Amended Pre-Hearing Brief of the Defendants filed December 15, 2015 contained proposed additional APA Submissions from Dr. Nancy Lembo dated December 2, 2015. At the time set for the hearing on December 16, 2015, the parties appeared and the Defendants took the position at that time that the claim was subject to mandatory mediation and this matter was

continued by this Commissioner for the purpose conducting mandatory mediation. At the mediation, no resolution was reached but mediation was adjourned and an agreement was entered into whereby the Claimant agreed to an evaluation by Dr. Lembo and that the Defendants would depose Dr. Lembo. Subsequently, the Defendants filed a Motion and Form 21 on July 8th alleging that the Claimant had not been compliant with authorized medical care because she had not attended NCS/EMG referred to in the December 2, 2015 report and the mediated report of Dr. Lembo of February 16, 2016. This Commissioner granted the Motion in part, ordering the Claimant to undergo the bilateral upper extremity EMG testing; which testing was performed.

This matter was reset for hearing first on August 30, 2016 and then reset on September 6, 2016. In their Pre-Hearing Brief and at the reset hearing, the Defendants resumed the position that Dr. Healy had not specifically used the words that the Claimant had reached maximum medical improvement although he had issued a statement as argued by the Claimant that the Claimant's condition was permanent. This Commissioner issued an Administrative Order on September 27, 2016 directing that the Claimant return to Dr. Joseph R. Healy for an evaluation of her current condition and a determination as to whether the Claimant has reached maximum medical improvement with evaluation to occur within thirty (30) days. Subsequently, the Claimant attended an appointment with Dr. Healy at which he performed the evaluation,

addressed her current condition and issued a statement that the Claimant in his opinion was at maximum medical improvement. After the submission of that statement to the Commission, the Defendants asked to be allowed to take the deposition of Dr. Healy on those issues which was granted. Subsequently, the Claimant requested a telephone conference which was held with the parties and it was ordered that the Defendants immediately take the deposition of Dr. Healy so that the Record could be closed in this matter. Subsequently, the deposition of Dr. Healy was taken and the Record was closed and the decision was entered.

As a summarization of the testimony and evidence submitted and according to the testimony of the Claimant, the medical evidence and other documentation placed into the Record, after this injury was reported, this case was accepted and benefits were paid by the State Accident Fund. According to the testimony and medical evidence after acceptance, the Claimant was seen by Dr. Goldberger and by PA Ashley Ware for on-going problems in reference to her cervical spine and problems with cervical nerve root irritation and for bilateral DeQuervain's tenosynovitis, repetitive overuse syndrome, and arthralgias with spasms in the hands. She also had low back pain with nerve root irritation based on the evaluation findings on May 1, 2013 which were copied to Dr. Nantias. Dr. Nantias evaluated her on May 3, 2013 finding bilateral hand numbness and tingling, right greater

than left and referring to the continuing treatment with Dr. Goldberger and even in light of normal EMG studies and no evidence of carpal tunnel, gave an impression of bilateral carpal tunnel syndrome. On May 24, 2013 because conservative measures had failed and even in light of negative EMG studies, he recommended and then performed bilateral carpal tunnel release surgeries.

The records are clear that after these surgeries, Ms. Cartee continued to have problems with numbness, tingling, pain and chronic pain. Dr. Nantias recorded in his October 10, 2013 note that she was going to physical therapy and that she was going to be referred back to Dr. Goldberger for continuing treatment of her neck which, "seems to help her hands". Treatment for her hands and arms was then transferred to Dr. Chason Hayes with Dr. Goldberger continuing to follow her for her cervical problems. Dr. Goldberger then recorded on November 6, 2013 that she had on-going cervical nerve root irritation secondary to multi-level cervical disc bulging from C3 to C7 levels and that she had neuropathic pain in both of her hands. Dr. Hayes who took over care diagnosed her with chronic pain and weakness in her hands in November at which time he recorded continuing numbness, tingling, chronic pain in her hands and arms following carpal tunnel releases. In March, 2014, he gave an impression of chronic multiple trigger fingers and chronic numbness, tingling and chronic pain including pain in the planar

part of the hand with chronic hand and arm pain and chronic cervical/radiculopathy. In the last visit on April 1st, 2014, in reference to the chronic pain in her hands with numbing and tingling in her fingers and thumbs, and including pain, swelling, stiffness, popping and catching, he recommended a staged approach first involving pulley release surgeries to the long fingers.

The records of Carolina Bone and Joint are replete with the fact that after the carpal tunnel syndrome surgeries and through the time that she was last seen by Dr. Hayes, Ms. Cartee underwent occupational and physical therapy for over a year which was performed at Lowe's Physical Therapy two to three times per week. I make note of this due to the later recommendations made by Dr. Lembo who apparently was not provided the records of that treatment by the Defendants.

As a result of the ongoing problems with her hands and arms, the Claimant requested a second opinion and was sent to Dr. Michael Ugino for a one-time independent medical evaluation concerning her chronic pain in her hands and arms who recommended referral to the Motions Disorder Clinic at the Medical College of Georgia in Augusta, Georgia. He also noted that she could possibly benefit from further injection treatment by his partner, Dr. Ryan Wetzell. This evaluation was performed on May 2, 2014.

According to the evidence, the Defendants refused to

authorize the treatment through Georgia College of Medicine nor was any other treatment authorized and then after a letter from Dr. Ryan Wetzel, July 17, 2014, recommending a referral to the MUSC Neurology Department, that medical care was not authorized by the Defendants. In fact, no further treatment was authorized or provided from the May 2, 2014 visit until October 20, 2014.

During this time, there were numerous requests being made by the Claimant for treatment by a local specialist in the Florence-Darlington area, where the Claimant lived. The Claimant requested authorization for medications by her family physician and for authorization for continued physical therapy to address her ongoing problems. The Defendants never authorized treatment by either the Georgia College of Medicine Neurology Clinic or the Neurology Department at MUSC and instead of sending the Claimant to a neurologist as recommended or authorizing local care, sent the Claimant to another orthopaedist at USC in Columbia. Dr. Capito concurred with Dr. Ugino that the Claimant was not a candidate for further surgery and that he did not see a surgical option. He noted in his report all the problems that she was having with her hands and arms; that she had had bilateral carpal tunnel surgeries; that she had been treated for degenerative joint disease and bulging discs in her cervical spine and had had steroid injections; and that she had gone through a year's physical therapy. He noted that she had problems with lifting any weight whatsoever and

noted all of the severe problems with numbing, tingling, lack of strength, pain and pain upon motion she was having. After stating there was no current surgical option and specifically that he would not recommend any type of revisionary carpal tunnel surgery, he recommended referral to a pain management specialist.

According to the testimony and evidence presented subsequent to that evaluation, there was no treatment authorized by any physician by the Defendants. The Defendants did not authorize any local medical care of either a conservative nature to include medications and physical therapy or any treatment by a local doctor. The next possible provision of any type of treatment being provided by the Defendants was at the end of January of 2015. Because of the failure of the Defendants to provide any medical care, between May, 2014 and January, 2015, Ms. Cartee went to see a local neurologist, Dr. R. Joseph Healy, beginning on January 29, 2015 and Dr. Healy has treated her ever since that time. In addition to providing medical care, he has performed numerous objective diagnostic tests, including EMG and Nerve Conduction Studies, bone scans, MRIs and x-rays. His treatment has not only included medications and analgesic creams but also cervical spine injections which according to the records helped with the problems in reference to her neck, arms and hands.

According to the testimony, documentary evidence and the

medical records, the next authorized medical care provided by the Defendants was an evaluation performed by Dr. Nancy Lembo on June 11, 2015. In that evaluation, Dr. Lembo requested the EMG/NCS studies, the medical records from Dr. Healy, as well as the MRI of the cervical spine and the bloodwork that the Claimant had had performed. The Claimant was to follow-up after those records were received and reviewed. There is no indication and it is specifically established by the evidence that following that visit on June 11, 2015 the Defendants did not provide any additional medical care nor is there any evidence that the Defendants ever provided any of the medical records requested by Dr. Lembo nor did they in any way make any further requests or schedule any more appointments with Dr. Lembo prior to the hearing that was set on December 16, 2015.

After this matter was set for hearing and as actually placed into evidence by both the Claimant and the Defendants, without seeing her again Dr. Lembo was asked to make treatment recommendations on December 2, 2015. Dr. Lembo specifically recorded in that report that,

"In light of incomplete records, it is difficult to make full recommendations. I do feel repeating the EMG/NCS of both upper extremities is warranted to further evaluate her persistent symptoms with comparison to the original study."

In addition, she recommended bloodwork to rule out a systemic process. It is clear from her notes that the EMG/NCS studies that she was referring to was in addition to and for comparison

with the original that was found to be normal by Dr. Nantias. There is no question that she did not know that Dr. Healy had conducted repeat EMG studies.

Subsequent to and pursuant to the mediation agreement, Dr. Lembo saw Ms. Cartee on February 16, 2016. She again recorded the problems with pain, numbness and tingling in both hands and the neck pain radiating to the tops of both shoulders and episodes with her hands locking up. Dr. Lembo repeated her recommendations for a bone scan, EMG studies and bloodwork and for a triple phased bone scan.

In her deposition, Dr. Lembo specifically noted that she had never been provided any of the records from the past treatment by Dr. Goldberger, Dr. Hayes and Dr. Nantias or Dr. Healy nor any of the other records from any tests that she had recommended be performed including EMG/NCS studies, MRIs and bloodwork that she recommended be performed; all of which had been performed by Dr. Healy. She did not know that an MRI of the cervical spine which she had recommended be performed had been performed and she did not know that the bloodwork that she had requested be performed had been performed on a consistent, regular and repeated basis. (Dep. 8/8/16, p. 29, l. 2 - p. 31, l. 25). In addition, Dr. Lembo had recommended a triple phased bone scan which had been authorized by the Defendants, which Ms. Cartee had attended and which was performed on May 2, 2016. However, in her deposition Dr. Lembo had not been provided the

test results from that bone scan and was only provided those at the deposition by Claimant's counsel. After testifying that the results of those would be a good indication that she did not have RSD or a complex regional pain syndrome which was the reason that she had requested those and after review of the results she ruled that out as a diagnosis. She also did not know Dr. Healy had performed that scan. (Dep. 8/8/16, p. 32, l. 1 - 25). Also in her deposition after finding out that the MRI that she had requested of the cervical spine had been conducted, that the EMG/NCS had been performed, that the bone scan had been performed, that blood tests had regularly been performed and there was no indication of any problem of systemic nature from those blood tests, Dr. Lembo stated that the only treatment that she would recommend before stating that the Claimant was at maximum medical improvement as far as improving her condition, would be physical therapy and possible injections. She then agreed that the records established that both of those had been performed and then testified that since and after those had been performed, you would simply be talking about symptomatic relief. (Dep. 8/8/16, p. 38, l. 16 - p. 40, l. 8).

In her testimony, Ms. Cartee described the problems that she developed while performing her work activities which had caused these problems including the heavy lifting of the microphones, cables and equipment necessary to perform her job in the court room which required her to set up and break down

that equipment at the beginning and end of each court session; to pack those items into heavy suitcases which weighed approximately 80-100 pounds together and to then carry that between the courtroom and her residence or accommodations. In addition, she described her work duties throughout the entire day. Ms. Cartee is a mask court reporter which requires her to maintain her neck in a rigid steady position with constant pressure being placed against her face with her hands and mask and from her neck to insure a tight seal around the mask to prevent disruption from her verbal recording into the mask and equipment of the testimony and evidence being presented during the court hearing. At the same time, that she was required to hold the mask securely in place, she was constantly taking notes and entering exhibits, etc. The continual activity of performing and holding the mask in place with constant pressure to insure an airtight seal around her face so that her verbal recording into the transcription equipment would not interrupt, required great and constant physical stress and strain on both her hands and neck. In addition to her reporting duties, she testified as to the typing and other data entry work that she had to do after that in reference to transcribing and producing hearing transcripts. She then described the time and her duties when this problem really developed which was while she was reporting a very lengthy, complicated one-month trial. She testified that Judge Baxley, for whom she reported, was

regularly assigned to very complex litigation. It was during and after this one-month trial in which she was having to make a continual transcript in addition to the normal performance of her courtroom duties of setting up and breaking down the equipment and the constant pressure of the mask recording that she developed her severe problems.

Ms. Cartee then described her current problems, which were in accordance with the medical records and evidence. She showed pictures of the various apparatuses that she has purchased or have been made for her to be able to simply open a jar which actually has to be already loosened before she can open it. She described her inability to lift, to hold any objects with her hands and arms. She described the constant and continual severe pain that she has throughout her neck, shoulders, arms and hands and that how any type of activity, even attending a painting class for a one-hour period will cause her to have severe pain after that. She noted the constant throbbing, disabling-type pain that she has on a daily basis. She does not drive because of the inability to hold the steering wheel other than very short distances and her husband does all of the driving and actually drives her at all times possible even to local appointments. In reference to the severity of the inability to use her hands to grip anything at all, as one of the apparatuses she uses, she brought and had pictures put into the Record of a small device that she uses to simply turn the top on an already

loosened soda bottle. She showed pictures of a device that she has under her countertop made by a member of her church, wherein after her husband has broken the seal on any type of jar she then uses this with her arms to then further loosen and open the jar lid. She described how she uses her arms and not her hands actually to a large degree to open items. Ms. Cartee's testimony is confirmed by the functional capacity evaluation that was performed by Ms. Tracy Hill, RPT. In that evaluation, she could not lift with her arms at various heights more than 4-7 pounds and she could not carry more than 7 pounds with both arms. She could carry only 3 pounds in the right hand and 4 pounds in the left hand. She could push or pull only 14 pounds with her hands and arms in a sled. During the functional capacity evaluation, she was tested on being able to open various items. She had to use both hands to open a pill bottle. Getting a lid off a plastic container took 4 trials with both hands. She had difficulty clamping paper as she required both hands to perform that task and she was unable to perform the task of opening a jar, opening a water bottle and unable to seal a plastic sandwich bag. She was also administered two typing tests and on the first test she performed only at 35 words per minutes with 91% accuracy and on the second test, 35.5 words per minute with only 83.63% accuracy. Prior to her injury, she had a reported typing speed of 125-140 words per minute with 99% accuracy. On the evaluation, the Claimant was found to be able

to perform work at less than the sedentary work level which is the minimal physical capacity demand level of work under the Dictionary of Occupational Titles; meaning she is physically unable to perform any physical demand classification of work.

Wherefore, based on the review of the testimony and evidence submitted, I find that the Claimant has established by a preponderance of the evidence that she is entitled to the benefits sought which includes the finding that she is totally and permanently disabled from gainful employment and that she is entitled to an Award for total and permanent disability with accompanying lifetime medical care. Based on her total and permanent disability, she is entitled to all medical care causally related to the problems with her cervical spine and with her arms and hands which resulted from the work-related injury which will affect a cure or provide relief from the disabling symptoms resulting from these problems. Based on his treatment and knowledge of her condition, Dr. Healy is to be authorized along with such other medical care necessary to effect a cure and provide relief from the disabling symptoms and conditions stemming from her cervical spine and hands as found to be compensable by this Order. Therefore, based upon my findings, I have made the following findings of salient fact:

FINDINGS OF FACT

1. The Claimant suffered an admitted injury by accident arising out of and within the course and scope of her employment.

2. The Defendants have provided some medical care and treatment in this case. Due to the defendants not providing continuing medical care or local medical care after May 14, 2014, the Claimant sought other treatment with Dr. Joseph Healy on her own.

3. The Claimant asserts that she is permanently and totally disabled. She claims that she has problems with both hands and her cervical spine to the degree that she is unable to earn wages. Claimant also asserts, based on the opinion of Dr. Healy, that she is permanently and totally disabled.

4. Defendants contend that the Claimant is not at MMI and base that conclusion on the opinion of Dr. Nancy Lembo who they have designated as the authorized treating physician.

5. They contend that since the Claimant has yet to reach MMI, Claimant is, as of now, entitled only to continuing medical care and treatment as directed by Dr. Lembo.

6. The record is replete with medical records of treatment the Claimant has undergone to include carpal tunnel releases that failed.

7. Claimant sought treatment on her own with Dr. Healy who is a neurologist in Florence. He has treated her for almost two years.

8. Claimant lives in Hartsville.

9. Claimant testified that she is 62 years old and worked as a court reporter for the Employer.

10. Claimant testified that she now could no longer do that job. Her ability to write and to type have been so severely impacted, she can no longer work as a court reporter.

11. Claimant also testified that her ability to perform the tasks of daily living has been severely impacted as well. She testified that she has great difficulty performing any task that requires hand dexterity or grip strength.

12. The Claimant underwent a Functional Capacity Evaluation which was administered by Tracy Hill, PT on November 23, 2015. Ms. Hill wrote of that evaluation, "Mrs. Cartee put forth a consistent effort during the evaluation. She qualifies for less than sedentary work...Mrs. Cartee does not meet the full physical requirements necessary for sedentary work due to her limited lifting ability and due to her limited sitting tolerance. Sedentary work also requires the ability to use both hands for repetitive hand-finger actions and she does not have this ability."

13. The Claimant has seen Dr. Lembo for evaluation purposes. Dr. Lembo testified that she has seen the Claimant twice.

14. There is much back and forth in Dr. Lembo's deposition about testing that needed to be done and testing that has already been performed.

15. While Dr. Lembo is an eminently qualified physician, it is clear to me from her deposition that she either hasn't been provided reports of testing already performed nor has testing been performed that she believes will give her information as to the Claimant's current condition.

16. It is also clear to me that there has been frustration on both sides as to testing and treatment.

17. Considering the above, I can only give limited weight to Dr. Lembo's opinion. She has only seen the Claimant twice and she doesn't have - for whatever reason - testing she believes necessary to formulate an opinion as to the Claimant's current medical condition. Her ability to opine as to whether the Claimant must be viewed in the context of her knowledge of the Claimant's case.

18. Additionally, I am troubled by the timeline of Dr. Lembo's designation as the authorized treating physician. She first sees the Claimant on June 11, 2015 and then only sees her again - for the only other time she has seen the Claimant - on February 16, 2016. I am certain both sides could offer

arguments as to why that is; but it does not change the fact that Dr. Lembo, who is the authorized treating physician, has seen the Claimant only twice.

19. Dr. Healy, however, has seen and treated the Claimant for almost two years. He is a specialist who is certainly qualified to treat the Claimant. Dr. Healy has provided medical care and treatment and the Claimant testified that she is pleased with the care he has provided.

20. Pursuant to an Interim Order the undersigned issued in this case, Dr. Healy saw the Claimant again on October 12, 2016. He wrote of that encounter, "I have previously stated the opinion that her current condition is permanent; and she will need medical care for the foreseeable future and most probably the remainder of her life (to provided symptomatic relief, to allow her to function and to try to maintain her current level of functioning); and that she is totally and permanently disabled from gainful full-time employment. After seeing her and reviewing her current condition, it is my opinion stated to a reasonable degree of medical certainty that she is at maximum medical improvement. Again, she will require medical care to address her disabling symptoms stemming from this work-related injury and its aftermath."

21. Subsequent to that opinion, the Defendants took the deposition of Dr. Healy on November 8, 2016. In that deposition, Dr. Healy affirmed his opinion stated above.

22. Dr. Healy has also opined that the Claimant may need physical therapy, massage therapy and pain management in the future to maintain her current level of function.

23. When I view the evidence as a whole and based on a preponderance of the evidence, the Claimant is permanently and totally disabled. She is 62 years old. The Claimant cannot per the FCE even qualify for sedentary work. She testified that she cannot return to her job and cannot do work or the tasks of daily living that requires dexterity and grip strength in her hands and fingers.

24. I find the Claimant to be very credible.

25. I find that the Claimant reached MMI on October 12, 2016.

26. Based on the testimony of Dr. Healy, I find that the Claimant's cervical spine is causally related to this work-related accident. Again, I give the greatest weight to Dr. Healy's opinion as the treating physician for the past many months.

27. Given her history with Dr. Healy and his familiarity with her case, Dr. Healy is to be the authorized treating physician as to her hands and cervical spine.

28. Based on a review of the evidence, the opinion of Dr. Goldsmith notwithstanding, I cannot find where an authorized psychologist or any treating medical doctor has causally related the claimant's current psychological condition to her work-

related accident and deny her request for benefits for psychological.

29. Claimant is also entitled to future medical care as set forth above and having been found to be entitled to an Award for total and permanent disability, she is entitled to lifetime medical care for all causally related medical care for the remainder of her life pursuant to the Act.

CONCLUSIONS OF LAW

As provided in S.C. Code §42-17-40, the following Conclusions of Law are made:

1. Under S.C. Code §42-9-10 and §42-1-120, total disability is defined under the Act for loss of earning capacity wherein based on the Claimant's age, education, background, experience and the physical facts of the injury, the jobs which the Claimant can perform are so limited in quality, quantity or dependability that a reasonably stable job market for those do not exist. Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. DuPont DeNemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996).

2. Under S.C. Code §42-15-60, Claimant is entitled to lifetime medical care under §42-15-60 for total and permanent disability. Having been declared totally and permanently disabled, Ms. Cartee is entitled to all reasonable and necessary treatment and care during her lifetime which will affect a cure

and provide relief for all conditions found to be causally related to the compensable injuries stemming from her work-related injury.

3. Under the stipulation and agreement of the parties, the parties have stipulated to jurisdiction and venue.

4. Under the agreement of the parties, the applicable average weekly wage is \$1,047.56 with a resulting compensation rate of \$698.41.

5. Under S.C. Code §42-9-301 and Rule 67-1605, the Claimant has requested that a lump sum award be made to the Claimant in lieu of the Claimant's entitlement to payments of compensation being made on a per week basis spread over the Claimant's lifetime as established by the South Carolina Mortality Table, S.C. Code §19-1-150, which payment of weekly compensation benefits, the Commission may order under S.C. Code §42-9-240 and pursuant to James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

ORDER AND AWARD

THEREFORE, IT IS ORDERED that the Claimant is entitled to an Award for total and permanent disability and the Claimant is entitled to the payment of continuing weekly compensation benefits in the amount of \$698.41 and continuing until 500 weeks of compensation have been paid. If any amounts of compensation have accrued that have not been paid as of the date of this Order such accrued compensation benefits shall be paid to the Claimant

in a lump sum. Further, the Claimant has requested that the Award of compensation be paid in a lump sum and based on my findings that request is granted and the residual lump sum award shall be calculated by the Commission pursuant to this Award. Further, once the calculation of the residual lump sum payment is determined, a supplemental order will be issued confirming that said lump sum is being paid in lieu of the Claimant's entitlement to weekly compensation payments being made to the Claimant for the remainder of her life. The Claimant was born on October 6, 1954 and at the time of this Award is 62 years of age and has a life expectancy of 22.47 years or 1,171.56 weeks. Her weekly life expectancy shall be used for the calculation of the residual value of weekly compensation payments to the Claimant over her lifetime.

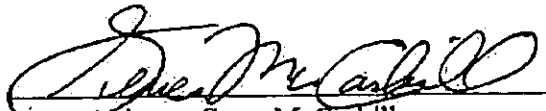
IT IS FURTHER ORDERED that the Claimant having been determined to be totally and permanently disabled and having been determined to have sustained permanent injury to her cervical spine (back) and her hands which affects her neck and hands, the Claimant is entitled to lifetime medical care for all causally related problems stemming from the injuries sustained as a part of her work-related accident. The Claimant is placed under the care of Dr. R. Joseph Healy, MD her treating neurologist and such other medical providers that he deems just and appropriate to provide all reasonable and necessary treatment and care to affect a cure and provide relief from those causally related medical

problems during the Claimant's lifetime pursuant to §42-15-60. That medical care shall specifically include the current medical care as detailed by Dr. Healy to include chronic pain management, massage therapy, physical therapy in addition to all conservative care including all medications and injections. The Claimant's request for benefits for psychological due to her psychological condition at this time as being causally related to work-related injuries is denied.

No hearing costs assessed in this matter.

AND IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

April 13, 2017

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

Pamela O. Cartee,

v.

S.C. Judicial Department,

EMPLOYEE,
CLAIMANT/RESPONDENT,
2nd APPELLANT,

EMPLOYER,

AND

State Accident Fund,

CARRIER,
DEFENDANTS/APPELLANTS
2nd RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on August 22, 2017 per
notices timely and properly served on all
parties of interest

Appellate Panel Decision and Order filed

October 17, 2017.

APPERANCES:

Claimant/Respondent represented by Preston F.
McDaniel, Esquire of Columbia, South
Carolina.

Defendants/Appellants represented by Sarah Alphin,
Attorney of Columbia, South Carolina.

This matter came before the Hearing Commissioner for hearing on September 6, 2016, on the basis of Claimant's Form 50 Request for Hearing. The Commissioner issued his Decision on April 13, 2017. As part of that Decision, the Hearing Commissioner made the following Findings of Fact, Conclusions of Law, and entered the following Award:

FINDINGS OF FACT

1. The Claimant suffered an admitted injury by accident arising out of and within the course and scope of her employment.

2. The Defendants have provided some medical care and treatment in this case. Due to the defendants not providing continuing medical care or local medical care after May 14, 2014, the Claimant sought other treatment with Dr. Joseph Healy on her own.

3. The Claimant asserts that she is permanently and totally disabled. She claims that she has problems with both hands and her cervical spine to the degree that she is unable to earn wages. Claimant also asserts, based on the opinion of Dr. Healy, that she is permanently and totally disabled.

4. Defendants contend that the Claimant is not at MMI and base that conclusion on the opinion of Dr. Nancy Lembo who they have designated as the authorized treating physician.

5. They contend that since the Claimant has yet to reach MMI, Claimant is, as of now, entitled only to continuing medical

care and treatment as directed by Dr. Lembo.

6. The record is replete with medical records of treatment the Claimant has undergone to include carpal tunnel releases that failed.

7. Claimant sought treatment on her own with Dr. Healy who is a neurologist in Florence. He has treated her for almost two years.

8. Claimant lives in Hartsville.

9. Claimant testified that she is 62 years old and worked as a court reporter for the Employer.

10. Claimant testified that she now could no longer do that job. Her ability to write and to type have been so severely impacted, she can no longer work as a court reporter.

11. Claimant also testified that her ability to perform the tasks of daily living has been severely impacted as well. She testified that she has great difficulty performing any task that requires hand dexterity or grip strength.

12. The Claimant underwent a Functional Capacity Evaluation which was administered by Tracy Hill, PT on November 23, 2015. Ms. Hill wrote of that evaluation, "Mrs. Cartee put forth a consistent effort during the evaluation. She qualifies for less than sedentary work...Mrs. Cartee does not meet the full physical requirements necessary for sedentary work due to her limited lifting ability and due to her limited sitting tolerance.

Sedentary work also requires the ability to use both hands for repetitive hand-finger actions and she does not have this ability."

13. The Claimant has seen Dr. Lembo for evaluation purposes. Dr. Lembo testified that she has seen the Claimant twice.

bout testing that needed to be done and testing that has already been performed.

15. While Dr. Lembo is an eminently qualified physician, it is clear to me from her deposition that she either hasn't been provided reports of testing already performed nor has testing been performed that she believes will give her information as to the Claimant's current condition.

16. It is also clear to me that there has been frustration on both sides as to testing and treatment.

17. Considering the above, I can only give limited weight to Dr. Lembo's opinion. She has only seen the Claimant twice and she doesn't have - for whatever reason - testing she believes necessary to formulate an opinion as to the Claimant's current medical condition. Her ability to opine as to whether the Claimant must be viewed in the context of her knowledge of the Claimant's case.

18. Additionally, I am troubled by the timeline of Dr.

Lembo's designation as the authorized treating physician. She first sees the Claimant on June 11, 2015 and then only sees her again - for the only other time she has seen the Claimant - on February 16, 2016. I am certain both sides could offer arguments as to why that is; but it does not change the fact that Dr. Lembo, who is the authorized treating physician, has seen the Claimant only twice.

19. Dr. Healy, however, has seen and treated the Claimant for almost two years. He is a specialist who is certainly qualified to treat the Claimant. Dr. Healy has provided medical care and treatment and the Claimant testified that she is pleased with the care he has provided.

20. Pursuant to an Interim Order the undersigned issued in this case, Dr. Healy saw the Claimant again on October 12, 2016. He wrote of that encounter, "I have previously stated the opinion that her current condition is permanent; and she will need medical care for the foreseeable future and most probably the remainder of her life (to provided symptomatic relief, to allow her to function and to try to maintain her current level of functioning); and that she is totally and permanently disabled from gainful full-time employment. After seeing her and reviewing her current condition, it is my opinion stated to a reasonable degree of medical certainty that she is at maximum medical improvement. Again, she will require medical care to

address her disabling symptoms stemming from this work-related injury and its aftermath."

21. Subsequent to that opinion, the Defendants took the deposition of Dr. Healy on November 8, 2016. In that deposition, Dr. Healy affirmed his opinion stated above.

22. Dr. Healy has also opined that the Claimant may need physical therapy, massage therapy and pain management in the future to maintain her current level of function.

23. When I view the evidence as a whole and based on a preponderance of the evidence, the Claimant is permanently and totally disabled. She is 62 years old. The Claimant cannot per the FCE even qualify for sedentary work. She testified that she cannot return to her job and cannot do work or the tasks of daily living that requires dexterity and grip strength in her hands and fingers.

24. I find the Claimant to be very credible.

25. I find that the Claimant reached MMI on October 12, 2016.

26. Based on the testimony of Dr. Healy, I find that the Claimant's cervical spine is causally related to this work-related accident. Again, I give the greatest weight to Dr. Healy's opinion as the treating physician for the past many months.

27. Given her history with Dr. Healy and his familiarity

with her case, Dr. Healy is to be the authorized treating physician as to her hands and cervical spine.

28. Based on a review of the evidence, the opinion of Dr. Goldsmith notwithstanding, I cannot find where an authorized psychologist or any treating medical doctor has causally related the claimant's current psychological condition to her work-related accident and deny her request for benefits for psychological.

Claimant is also entitled to future medical care as set forth above and having been found to be entitled to an Award for total and permanent disability, she is entitled to lifetime medical care for all causally related medical care for the remainder of her life pursuant to the Act.

CONCLUSIONS OF LAW

As provided in S.C. Code §42-17-40, the following Conclusions of Law are made:

1. Under S.C. Code §42-9-10 and §42-1-120, total disability is defined under the Act for loss of earning capacity wherein based on the Claimant's age, education, background, experience and the physical facts of the injury, the jobs which the Claimant can perform are so limited in quality, quantity or dependability that a reasonably stable job market for those do not exist. Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. Dupont DeNemours Co.,

227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996).

2. Under S.C. Code §42-15-60, Claimant is entitled to lifetime medical care under §42-15-60 for total and permanent disability. Having been declared totally and permanently disabled, Ms. Cartee is entitled to all reasonable and necessary treatment and care during her lifetime which will affect a cure and provide relief for all conditions found to be causally related to the compensable injuries stemming from her work-related injury.

3. Under the stipulation and agreement of the parties, the parties have stipulated to jurisdiction and venue.

4. Under the agreement of the parties, the applicable average weekly wage is \$1,047.56 with a resulting compensation rate of \$698.41.

5. Under S.C. Code §42-9-301 and Rule 67-1605, the Claimant has requested that a lump sum award be made to the Claimant in lieu of the Claimant's entitlement to payments of compensation being made on a per week basis spread over the Claimant's lifetime as established by the South Carolina Mortality Table, S.C. Code §19-1-150, which payment of weekly compensation benefits, the Commission may order under S.C. Code §42-9-240 and pursuant to James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

ORDER AND AWARD

THEREFORE, IT IS ORDERED that the Claimant is entitled to an Award for total and permanent disability and the Claimant is entitled to the payment of continuing weekly compensation benefits in the amount of \$698.41 and continuing until 500 weeks of compensation have been paid. If any amounts of compensation have accrued that have not been paid as of the date of this Order such accrued compensation benefits shall be paid to the Claimant in a lump sum. Further, the Claimant has requested that the Award of compensation be paid in a lump sum and based on my findings that request is granted and the residual lump sum award shall be calculated by the Commission pursuant to this Award. Further, once the calculation of the residual lump sum payment is determined, a supplemental order will be issued confirming that said lump sum is being paid in lieu of the Claimant's entitlement to weekly compensation payments being made to the Claimant for the remainder of her life. The Claimant was born on October 6, 1954 and at the time of this Award is 62 years of age and has a life expectancy of 22.47 years or 1,171.56 weeks. Her weekly life expectancy shall be used for the calculation of the residual value of weekly compensation payments to the Claimant over her lifetime.

IT IS FURTHER ORDERED that the Claimant having been determined to be totally and permanently disabled and having been

determined to have sustained permanent injury to her cervical spine (back) and her hands which affects her neck and hands, the Claimant is entitled to lifetime medical care for all causally related problems stemming from the injuries sustained as a part of her work-related accident. The Claimant is placed under the care of Dr. R. Joseph Healy, MD her treating neurologist and such other medical providers that he deems just and appropriate to provide all reasonable and necessary treatment and care to affect a cure and provide relief from those causally related medical problems during the Claimant's lifetime pursuant to §42-15-60. That medical care shall specifically include the current medical care as detailed by Dr. Healy to include chronic pain management, massage therapy, physical therapy in addition to all conservative care including all medications and injections. The Claimant's request for benefits for psychological due to her psychological condition at this time as being causally related to work-related injuries is denied.

GROUND FOR REVIEW - DEFENDANTS/1ST APPELLANTS

By way of an Application for Review the Employer/Carrier as 1st Appellants have raised the following grounds for review:

1. Whether Hearing Commissioner erred in finding a fact number 17 in only giving limited weight to Dr. Lembo's opinion with such a finding is against the greater weight of the evidence in the record.
2. Whether Hearing Commissioner erred in finding of fact number 18 in finding an issue with the timeline of Dr. Lembo's designation as the authorized treating physician with such a

finding is against the greater weight of the evidence in the record.

3. Whether Hearing Commissioner erred in finding of fact number 23 in finding that Claimant is permanently and totally disabled, that she cannot qualify for sedentary work, that she cannot return to her job and the tasks of daily living when such a finding is against the greater weight of evidence in the record.
4. Whether Hearing Commissioner erred in finding of fact number 25 that Claimant reached MMI on October 12, 2016 when such a finding is against the greater weight of evidence in the record.
5. Whether Hearing Commissioner erred in finding of fact number 26 in finding that Claimant's cervical spine is causally related to the work accident and giving the greatest weight to Dr. Healy's opinion when such a finding is against the greater weight of evidence in the record.
6. Whether Hearing Commissioner erred in finding of fact number 29 in finding that Claimant is entitled to future medical care and having been found permanently and totally disabled is entitled to lifetime medical care for causally related care for her life when such a finding is against the greater weight of evidence in the record.
7. Whether Hearing Commissioner erred in conclusion of law number 2 in concluding that Claimant is entitled to lifetime medical care for permanent total disability and now having been declared totally and permanently disabled, Claimant is entitled to reasonable and necessary treatment and care during her lifetime when such a conclusion is against the greater weight of evidence in the record.
8. Whether Hearing Commissioner erred in ordering that Claimant is entitled to an award of total and permanent disability when such an order is against the greater weight of the evidence in the record.
9. Whether Hearing Commissioner erred in ordering that Claimant is determined to be totally and permanently disabled and having sustained permanent injury to her cervical spine and her hands that affects her neck and hands and that Claimant is entitled lifetime medical care for causally related problems when such an order is against the greater weight of evidence in the record.

10. Whether Hearing Commissioner erred in ordering that Claimant is placed under the care of Dr. Joseph Healy her treating neurologist when such an order is against the weight of evidence in the record.
11. Whether Hearing Commissioner erred in ordering that Claimant's medical care shall specifically include current medical care is detailed by Dr. Healy including chronic pain management, massage therapy, physical therapy in addition all conservative care getting all medications and injections when such an order is against the greater weight of evidence in the record.

GROUND'S FOR REVIEW - CLAIMANT 2ND APPELLANT

By way of an Application for Review, the Claimant as 2nd Appellant has raised the following grounds for review:

1. That based on the appeal of the Defendants, pursuant to S.C. Code of Laws §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner not otherwise appealed by the Defendants in this matter.
2. That the Hearing Commissioner based on the substantial evidence in the Record erred by failing to award the Claimant psychological care under her treating psychologist and through her treating medical doctors as referenced in the Order. This appeal is as to all Findings of Fact, Conclusions of Law and the Order and Award in reference to that part of the decision.

FULL COMMISSION PANEL REVIEW AND DECISION

Copies of the Grounds for Review of both parties were furnished to all interested parties prior to the oral argument scheduled before the Appellate Panel on August 22, 2017.

Pursuant to SC Code §42-17-50 (1985 as amended), the

Appellate Panel reviewed the Order and Award and considered all the issues raised by the Briefs of both Appellants and Respondents.

After careful review and consideration of this matter, the Full Commission Appellate Panel **AFFIRMS** the Single Commissioner's Order and Award and adopts the Findings of Fact and Conclusions of Law and the Award of the Hearing Commissioner as the Findings of Fact and Conclusions of Law and Award of the Commission:

FULL COMMISSION FINDINGS OF FACT

1. The Claimant suffered an admitted injury by accident arising out of and within the course and scope of her employment.

2. The Defendants have provided some medical care and treatment in this case. Due to the defendants not providing continuing medical care or local medical care after May 14, 2014, the Claimant sought other treatment with Dr. Joseph Healy on her own.

3. The Claimant asserts that she is permanently and totally disabled. She claims that she has problems with both hands and her cervical spine to the degree that she is unable to earn wages. Claimant also asserts, based on the opinion of Dr. Healy, that she is permanently and totally disabled.

4. Defendants contend that the Claimant is not at MMI and base that conclusion on the opinion of Dr. Nancy Lembo who they have designated as the authorized treating physician.

5. They contend that since the Claimant has yet to reach MMI, Claimant is, as of now, entitled only to continuing medical care and treatment as directed by Dr. Lembo.

6. The record is replete with medical records of treatment the Claimant has undergone to include carpal tunnel releases that failed.

7. Claimant sought treatment on her own with Dr. Healy who is a neurologist in Florence. He has treated her for almost two years.

8. Claimant lives in Hartsville.

9. Claimant testified that she is 62 years old and worked as a court reporter for the Employer.

10. Claimant testified that she now could no longer do that job. Her ability to write and to type have been so severely impacted, she can no longer work as a court reporter.

11. Claimant also testified that her ability to perform the tasks of daily living has been severely impacted as well. She testified that she has great difficulty performing any task that requires hand dexterity or grip strength.

12. The Claimant underwent a Functional Capacity Evaluation which was administered by Tracy Hill, PT on November 23, 2015. Ms. Hill wrote of that evaluation, "Mrs. Cartee put forth a consistent effort during the evaluation. She qualifies for less than sedentary work...Mrs. Cartee does not meet the full physical

requirements necessary for sedentary work due to her limited lifting ability and due to her limited sitting tolerance. Sedentary work also requires the ability to use both hands for repetitive hand-finger actions and she does not have this ability."

13. The Claimant has seen Dr. Lembo for evaluation purposes. Dr. Lembo testified that she has seen the Claimant twice.

14. There is much back and forth in Dr. Lembo's deposition about testing that needed to be done and testing that has already been performed.

15. While Dr. Lembo is an eminently qualified physician, it is clear to us from a review of her deposition that she either has not been provided reports of testing already performed or testing has not been performed that she believes will give her information as to the Claimant's current condition.

16. It is also clear to us that there has been frustration on both sides as to testing and treatment.

17. Considering the above, we can only give limited weight to Dr. Lembo's opinion. She has only seen the Claimant twice and she does not have - for whatever reason - testing she believes necessary to formulate an opinion as to the Claimant's current medical condition. Her ability to opine as to whether the Claimant must be viewed in the context of her knowledge of the

Claimant's case.

18. Additionally, we are troubled by the timeline of Dr. Lembo's designation as the authorized treating physician. She first sees the Claimant on June 11, 2015 and then only sees her again - for the only other time she has seen the Claimant - on February 16, 2016. We are certain both sides could offer arguments as to why that is; but it does not change the fact that Dr. Lembo, who is the authorized treating physician, has seen the Claimant only twice.

19. Dr. Healy, however, has seen and treated the Claimant for almost two years. He is a specialist who is certainly qualified to treat the Claimant. Dr. Healy has provided medical care and treatment and the Claimant testified that she is pleased with the care he has provided.

20. Pursuant to an Interim Order the Hearing Commissioner issued in this case, Dr. Healy saw the Claimant again on October 12, 2016. He wrote of that encounter, "I have previously stated the opinion that her current condition is permanent; and she will need medical care for the foreseeable future and most probably the remainder of her life (to provided symptomatic relief, to allow her to function and to try to maintain her current level of functioning); and that she is totally and permanently disabled from gainful full-time employment. After seeing her and reviewing her current condition, it is my opinion stated to a

reasonable degree of medical certainty that she is at maximum medical improvement. Again, she will require medical care to address her disabling symptoms stemming from this work-related injury and its aftermath."

21. Subsequent to that opinion, the Defendants took the deposition of Dr. Healy on November 8, 2016. In that deposition, Dr. Healy affirmed his opinion stated above.

22. Dr. Healy has also opined that the Claimant may need physical therapy, massage therapy and pain management in the future to maintain her current level of function.

23. When we view the evidence as a whole and based on a preponderance of the evidence, the Claimant is permanently and totally disabled. She is 62 years old. The Claimant cannot, per the FCE, even qualify for sedentary work. She testified that she cannot return to her job and cannot do work or the tasks of daily living that requires dexterity and grip strength in her hands and fingers.

24. We find the Claimant to be very credible.

25. We find that the Claimant reached MMI on October 12, 2016.

26. Based on the testimony of Dr. Healy, we find that the Claimant's cervical spine is causally related to this work-related accident. Again, we give the greatest weight to Dr. Healy's opinion as the treating physician for the past many

months.

27. Given her history with Dr. Healy and his familiarity with her case, Dr. Healy is hereby named the authorized treating physician as to her hands and cervical spine.

28. Based on a review of the evidence, the opinion of Dr. Goldsmith notwithstanding, we cannot find where an authorized psychologist or any treating medical doctor has causally related the claimant's current psychological condition to her work-related accident, and therefore deny her request for benefits for psychological.

Claimant is also entitled to future medical care as set forth above and having been found to be entitled to an Award for total and permanent disability, she is entitled to lifetime medical care for all causally related medical care for the remainder of her life pursuant to the Act.

FULL COMMISSION CONCLUSIONS OF LAW

As provided in S.C. Code §42-17-40, the following Conclusions of Law are made:

1. Under S.C. Code §42-9-10 and §42-1-120, total disability is defined under the Act for loss of earning capacity wherein based on the Claimant's age, education, background, experience and the physical facts of the injury, the jobs which the Claimant can perform are so limited in quality, quantity or dependability that a reasonably stable job market for those do

not exist. Coleman v. Quality Concrete Products, Inc., 245 S.C. 645, 142 S.E.2d 43 (1965); Colvin v. E.I. Dupont DeNemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 323 S.C. 113, 473 S.E.2d 699 (1996).

2. Under S.C. Code §42-15-60, Claimant is entitled to lifetime medical care under §42-15-60 for total and permanent disability. Having been declared totally and permanently disabled, Ms. Cartee is entitled to all reasonable and necessary treatment and care during her lifetime which will affect a cure and provide relief for all conditions found to be causally related to the compensable injuries stemming from her work-related injury.

3. Under the stipulation and agreement of the parties, the parties have stipulated to jurisdiction and venue.

4. Under the agreement of the parties, the applicable average weekly wage is \$1,047.56 with a resulting compensation rate of \$698.41.

5. Under S.C. Code §42-9-301 and Rule 67-1605, the Claimant has requested that a lump sum award be made to the Claimant in lieu of the Claimant's entitlement to payments of compensation being made on a per week basis spread over the Claimant's lifetime as established by the South Carolina Mortality Table, S.C. Code §19-1-150, which payment of weekly compensation benefits, the Commission may order under S.C. Code

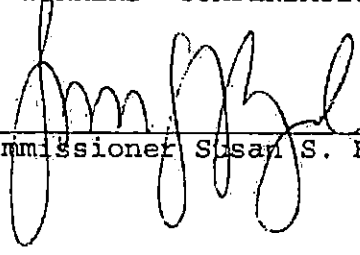
§42-9-240 and pursuant to James v. Anne's, Inc., 390 S.C. 188,
701 S.E.2d 730 (2010).

DECISION AND ORDER OF THE COMMISSION ON APPEAL

THEREFORE, IT IS ORDERED AND FOUND that the Order and Award
of the Hearing Commissioner shall be and hereby is **AFFIRMED**.

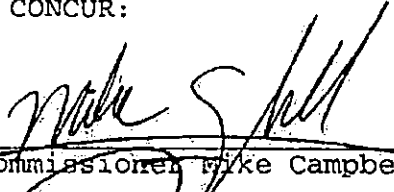
AND IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION

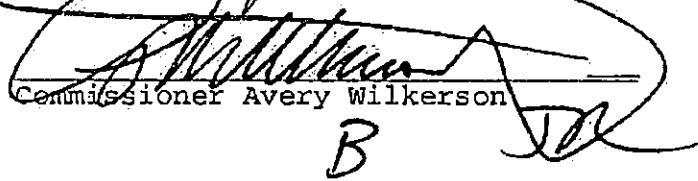


Commissioner Susan S. Barden

I CONCUR:



Commissioner Mike Campbell



Commissioner Avery Wilkerson

B 

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the
above entitled action upon all parties to this case by sending an electronic copy hereof by
electronic mail addressed to the attorneys for said parties; or if there is an unrepresented
party(ies), by depositing a copy hereof, postage paid in the United States mail, first class,
addressed to the unrepresented party(ies) and to the attorney(s) for the represented
party(ies).

By Eugenia on October 17, 2017

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

Pamela Cartee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
SC Judicial Department,	)	Interim Order
	)	
Employer,	)	
	)	
State Accident Fund,	)	
	)	
Carrier,	)	
Defendants	)	

A hearing was held in this matter before the undersigned on 02/12/18 to resolve a dispute with a portion of the Attorneys Fees in this case.

To provide for completeness of the record, this Interim Order provides written authorization and approval for disbursement of \$59,632.69 in fees in the above referenced matter. Based on a review of the transcript from the hearing on February 12, 2018, the hearing on February 12, 2018 was to determine whether counsel is entitled to the delta between the amount requested by counsel of \$73,094.45 and the amount already approved \$59,632.69. The request for the amount in question - \$13,461.76 – is under review.

Columbia, SC


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party February 21, 2018

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

Pamela Cartee,	)	
	)	
Claimant,	)	
vs.	)	
	)	
SC Judicial Department,	)	Order
	)	
Employer,	)	
	)	
State Accident Fund,	)	
	)	
Carrier,	)	
Defendants	)	
	)	

A hearing was held in this matter before the undersigned on 02/12/18 to resolve a dispute with a portion of the Attorneys Fees in this case.

Findings of Fact and Rulings of Law

1. The question at bar is whether Claimant's Counsel is entitled to additional requested attorney's fees.
2. Determination of this question rests in the plain reading of Regulation 67-1205(c)(2) which reads in part, "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."
3. I cannot find any persuasive authority for an award beyond that amount. I awarded the Claimant permanent and total disability on 04/13/17. While that award was on appeal, the case was not final and, as such, it would be premature to determine an award. Additionally, while on appeal, that Order could have been awarded to a greater award or a lesser award. The Full Commission could have vacated my Order and remanded the case for a hearing de novo. The determination of the award with finality could not be reached until my Order became the law of the case.
4. Once my order was the law of the case, The Defendants then paid the Claimant the commuted value of the award - \$179,077.14. The Form 19 reflects this payment. Based on the payment, Claimant's counsel is entitled to an attorney's fee of 33.3% of that amount which is \$59,632.69. I have previously ordered payment of that amount. I cannot find and counsel has not submitted any authority which supplants Regulation 67-1205(c)(2). As such, the payment of any additional attorney's fees must be consistent with 67-1205(c)(2).

Therefore, the petition for additional attorney's fees is denied.

Columbia, SC


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
March 6, 2018

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

gfb

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) FOR THE FOURTH JUDICIAL CIRCUIT
C/A No. **18CP16-0334**

PRESTON F. MCDANIEL, ESQUIRE)
AND)
JOHN M. MILLING, ESQUIRE)
Plaintiffs)

v.)

SOUTH CAROLINA WORKERS')
COMPENSATION COMMISSION)
Defendant.)

TEMPORARY RESTRAINING
ORDER ISSUED WITHOUT NOTICE
PURSUANT TO SCRCP RULE 65 (B)

IN RE:

South Carolina Workers,
Compensation Commission
WCC File No.: 1307922

PAMELA CARTEE,
Employee-Claimant

v.

SOUTH CAROLINA JUDICIAL DEPT,
Employer, and
STATE ACCIDENT FUND,
AS Carrier,
Defendants.

2018 APR 17 AM 10:30
SCOTT B. SUGGS
CLERK OF COURT/ROD
DARLINGTON COUNTY, S.C.

FILED

This Court having reviewed the Affidavit and the verified
Complaint and having found that the Declaratory Judgment sets
forth a request a determination by this Court under the

Declaratory Judgment Action as to the legal rights of the parties under Statute, Regulation and Caselaw determining whether the fee request as filed by the plaintiffs was as a matter of law in accordance with Statutes, Regulations, and case law; and finding that the Commission is quasi-judicial administrative body made up of lay and attorney Commissioners; and finding that this matter is a matter of legal interpretation and legal opinion as to the interpretation of the Statutes, Regulations and case law; and finding that an Appeal having been filed, to ensure the exhaustion of Administrative remedies, with the Commission which is set for May 24, 2018, Wherefore,

After due and proper consideration of the verified Complaint and the Affidavit attached thereto and incorporated therein by reference, and after a preliminary determination that the decision as to whether or not the fee petition as filed with the Workers Compensation Commission is a matter of legal interpretation of the applicable Statutes, Regulations and Caselaw through the petition and is thus a matter of law for decision by the Court, it is a , determination of this Court that a Temporary Restraining Order without Notice is proper pending a hearing for a determination as to whether or not the Temporary Restraining Order will be issued,

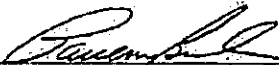
IT IS HEREBY ORDERED that the request for a Temporary Restraining Order Without Notice be and hereby is **GRANTED** and that the South Carolina Workers' Compensation Commission by and through

its Attorney(s) are hereby ordered and restrained from taking further action on the Appeal filed with the South Carolina Workers' Compensation Commission until such time as a hearing may be held on the Motion Requesting a Temporary Restraining Order pursuant to the motion filed with the Court.

Pursuant to the provisions of Rule 65(b) this Order shall expire ten (10) days from the date and time of issuance. This Order is issued on April 17, 2018 (date) at (hour) 10:00, 10 m. o'clock. Upon notice for good cause shown, which shall include the fact that a hearing cannot be held on the Motion for a Temporary Restraining Order, this Court will entertain an extension for a like period of time unless the Defendant South Carolina Workers' Compensation Commission, the Defendant in this action, agrees to that this Temporary Restraining Order shall remain in place until such time as a hearing can be held on the Motion for a Restraining Order.

AND IT IS SO ORDERED.

Under the allegations contained herein, no bond is required.


PRESIDING JUDGE
Fourth Judicial Circuit

April 17th, 2018
at 10:00 AM

FILED
2018 APR 17 AM 10:30
SCOTT B. SURGE
CLERK OF COURT/ROD
DARLINGTON COUNTY, S.C.

DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC FILE NO.: 1307922

Pamela O. Cartee,

Claimant,

v.

S.C. Judicial Department,

Employer,

&

State Accident Fund

Carrier,

Hearing held in Richland County,
South Carolina on May 21st, 2018.

Appearances: Mr. Preston F. McDaniel, on his own behalf.
No appearance was made by the Claimant.
No appearance was made by Defendants.

RECEIVED

JUL 02 2018

Purpose of Hearing: To resolve the dispute of Attorney Fees and Costs

SC Court of Appeals

Filed:

May 30, 2018

STATEMENT OF THE CASE

This matter comes before the Workers' Compensation Commission on appeal from a Decision and Order of the single Commissioner dated March 6th, 2018, denying the Petition for Additional Attorneys' Fees requested by Claimant's attorney, Preston McDaniel ("Counsel") on his Form 61. The purpose of this Hearing is to determine an appropriate award of attorneys' fees. The merits of the underlying claim were decided by Decision and Order of the Appellate Panel dated October 17th, 2017.

ORDER OF THE SINGLE COMMISSIONER

On March 6th, 2018, the single Commissioner made the following Findings of Fact and Rulings of Law:

1. The question at bar is whether Claimant's Counsel is entitled to additional requested attorney's fees.
2. Determination of this question rests in the plain reading of Regulation 67-1205(c)(2) which reads in part, "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."
3. I cannot find any persuasive authority for an award beyond that amount. I awarded the Claimant permanent and total disability on 04/13/17. While that award was on appeal, the case was not final and, as such, it would be premature to determine an award. Additionally, while on appeal, that Order could have been awarded to a greater award or a lesser award. The Full Commission could have vacated my Order and remanded the case for a hearing de novo. The determination of the award with finality could not be reached until my Order became the law of the case.
4. Once my order was the law of the case, The Defendants then paid the Claimant the commuted value of the award - \$179,077.14. The Form 19 reflects this payment. Based on the payment, Claimant's counsel is entitled to an attorney's fee of 33.3% of that amount which is \$59,632.69. I have previously ordered payment of that amount. I cannot find and counsel has not submitted any authority which supplants Regulation 67-1205(c)(2). As such, the payment of any additional attorney's fees must be consistent with 67-1205(c)(2).

Therefore, the petition for additional attorney's fees is denied.

DECISION OF THE COMMISSION

Based on our review of the record and consideration of the position of Counsel, we make the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. Counsel first secured compensation payable to the Claimant in the form of a lump sum payment of back-owed Temporary Total Disability by Order dated July 28th, 2016. Counsel secured the payment of compensation in the amount of \$29,600.93. On September 12th, 2016, the Commission awarded contingency attorneys' fees to Counsel in the amount of \$9,866.98, to be withheld from the amount awarded to Claimant in accordance with Reg. 67-1205(C)(2).
2. Counsel continued to represent Claimant. On April 17th, 2017 the single Commissioner awarded Claimant permanent and total disability benefits under § 42-9-10 and lifetime medical care under § 42-15-60. Defendants appealed the award to the Commission. While on appeal, Claimant remained on a running award of weekly total disability benefits. On October 17th, 2017, the Appellate Panel fully affirmed the award of the single Commissioner. Defendants did not seek an appeal of the award in accordance with § 42-17-60, and the award of the Full Commission became the law of the case on or about November 16th, 2017.
3. On or about December 13th, 2017, Defendants filed a WCC Form 19 with the Commission, showing that it had paid the award to Claimant in a lump sum in the amount of \$179,077.14. The Form 19 showed that Claimant had received 230 weeks of total disability benefits, paid weekly, that terminated on December 1st, 2017. The \$179,077.14 payment represented the commuted value, calculated in accordance with Reg. 67-1605, of the remaining weeks of total disability under § 42-9-10 that were due and payable at the time the award of the Full Commission became final.
4. On December 8th, 2017, Counsel filed a Form 61 attorney fee petition, asking for the Commission to award him a second contingency fee in the amount of \$73,094.45. According to the disbursement statement provided by Counsel, this amount was to be

withheld from the \$179,077.14 awarded to Claimant, purportedly pursuant to Reg. 67-1205(C)(2). \$73,094.45 represents 40.82% of \$179,077.14. Counsel asserts he is entitled to an award of attorneys' fees of 33.3% of all benefits paid to Claimant post-maximum medical improvement.

5. On January 9th, 2018, the single Commissioner sent an email to Counsel stating the following

I have reviewed your fee petition in Pamela Cartee v. SC Judicial Department several times. I have also reviewed the law I believe to be applicable. I can only find justification for a fee of \$59,632.69. If you wish to amend your Form 61 to reflect this amount as your fee, I will approve the fee petition. Otherwise, I am glad to set the matter for a hearing pursuant to the Act. I am happy to hear your position.

6. On January 8th or 9th 2018, Counsel sent a letter to the single Commissioner wherein he averred that he had come in person to the Commission three times without notice in an attempt to initiate communication with the Commissioner regarding the Petition for Attorneys' Fees currently pending before the Commissioner for adjudication. The single Commissioner declined to communicate with him about the matter under review.
7. On January 17th, 2018, the single Commissioner issued a Hearing Notice, setting the matter for the next available date, which was February 12th, 2018.
8. The Hearing was conducted on February 12th, 2018. Counsel was given the opportunity to submit evidence and argue his position.
9. On February 21st, 2018, the single Commissioner issued an Interim Order approving disbursement to Counsel of the amount of fees not in dispute.
10. On February 21st, 2018, Counsel sent a letter to the single Commissioner threatening to "take this matter up with the Supreme Court".
11. On February 22nd, 2018, Counsel sent a letter to the single Commissioner stating that he would hold off on filing anything with the courts if the Commissioner would engage in communication with him about the matter under review.
12. On March 2nd, 2018, Counsel sent a revised Form 61 that changed the amount of the final award listed from the total amount of all benefits, both temporary and permanent, paid, to only the amount of benefits paid post-MMI, but asked for the same amount, \$73,094.45, to be awarded as attorneys' fees.

13. On March 6th, 2018, the single Commissioner issued his Decision and Order Denying the Petition for Additional Attorneys' Fees.
14. On March 7th, 2018, Counsel sent a letter to the single Commissioner reiterating his threat to file litigation with the courts.
15. On March 13th, 2018, Counsel sent a letter to the Commission's Judicial Director, asking her for legal advice.
16. On March 15th, 2018, the Commission's Judicial Director sent an email to Counsel stating "If you file a WCC Form 30 appealing an award of attorneys' fees, the Commission will set the matter for a Hearing in accordance with Section 42-17-50. All parties of record, and the Claimant individually, should be served with any appellate documents."
17. On March 20th, 2018, Counsel filed a WCC Form 30 Request for Full Commission Review, raising seven grounds for appeal.
18. In accordance with longstanding Commission policy, the single Commissioner requested that the appeal be heard En Banc in accordance with Reg. 67-709(B)(1), since the appeal involved novel issues of law and regarded attorneys' fees.
19. On March 23rd, 2018, Counsel sent an email to Commission's General Counsel asking for a legal opinion, and again threatening civil litigation.
20. On April 19th, 2018, Counsel served the Commission with a Temporary Restraining Order Issued Without Notice Pursuant to Rule 65(B), SCRPC, restraining the Commission from taking further action on the Appeal filed by Counsel, that was issued by the Court of Common Pleas for the 4th Judicial Circuit. Despite the prohibition by the court on the Commission taking any action on the Appeal, Counsel filed a Brief of Appellant on April 22nd, 2018.
21. Also on April 19th, 2018, Counsel served the Commission with a Summons and Complaint, listing Counsel in his personal capacity as the Plaintiff and the Commission as Defendants. That matter was referred to the South Carolina Attorney General's Office for defense, and, as of the date of this Decision and Order, is currently pending before the Court of Common Pleas for the 4th Judicial Circuit on Defendant's Motion to Dismiss.
22. On April 27th, 2018, the Temporary Restraining Order expired pursuant to its terms and has not been extended. The Commission is unaware at the time of drafting of any legal prohibition on its issuance of this Decision and Order.

CONCLUSIONS OF LAW

1. Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission. S.C. Code Ann. § 42-15-90 (1976).
2. Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly. S.C. Code Ann. § 42-3-185 (1976).
3. Pursuant to 42-1-100 "compensation" is the money allowance *payable* to an employee or to his dependents.
4. Pursuant to Regulation 67-1205(B) "If the parties agree to a contingent fee contract, the fee is deemed reasonable when the following requirements are met and the requested fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee." S.C. Code Regs. 67-1205(B).
5. The Act requires that "as used in this Title, unless the context otherwise requires, the terms dealt with in §§ 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections." S.C. Code Ann. § 42-1-20.
6. The first sentence of R.67-1205(C) states that "[a]n attorney may charge up to, but not more than, 33.3% of the total amount of *compensation*, except in the following situations, where the attorney shall set the fee as instructed." Reg. 67-1205(C) (Emphasis added).
7. "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439,445 (2009). "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*¹

¹ The abuse of discretion standard is the standard of review to be followed by the courts on appeal; it is not the standard followed by the Commission in this review. The standard of review on Review and Rehearing by the Commission is set forth in § 42-17-50, which is the standard of review applied by the majority in this decision.

8. The single Commissioner held "The determination of the award with finality could not be reached until my order became the law of the case." We concur. This is a Conclusion of Law that the single Commissioner made, as he is authorized to do under § 1-23-350. The amount of compensation that is to be awarded cannot be determined until the Decision and Order making that award is final.

9. In a footnote to its Decision, the South Carolina Court of Appeals held

Essentially, worker's compensation benefits accrue along a time continuum: TTD benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. See S.C.Code Ann. §§ 42-9-10, -20, -30 (1976); S.C.Code Ann. § 42-9-260 (1996); 25A S.C.Code Ann.Reg. 67-507 (1990) (repealed by 21 S.C.Reg., No. 6, Part 2 at 439, effective June 27, 1997); *O'Banner v. Westinghouse*, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (Ct.App.1995). To require an employer to prove a claimant's disability ended before terminating TTD benefits dilutes the distinction between temporary and permanent disability payments, and it dilutes MMI as the definitive moment when a transition between the two different types of payments is accomplished.

Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999).

10. The language cited from *Hendricks*, above, makes it clear that we cannot award attorneys' fees in the manner requested by Counsel. Post-MMI benefits may be awarded as permanent disability benefits. However, Credit paid to the Employer/Carrier for benefits overpaid is not money allowance payable as described in section 42-1-100, and any funds allocated from the award for the payment of such credit may not be reduced to collect attorneys' fees. The footnote Counsel relies upon was favorably cited by our Supreme Court in *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2006). *Curiel* involved a dispute over the Commissioner's findings regarding maximum medical improvement and temporary total disability. *Curiel v. Environmental Management Services*, 376 S.C. 23, 30, 655 S.E.2d 482, 486 (2006). Neither *Hendricks* nor *Curiel* involved a dispute over an award of attorneys' fees. In the present case, we are not concerned with whether the benefits paid to Claimant post-MMI were temporary or permanent disability benefits. Our concern is that it is not appropriate to allow an attorney to take back benefits that have already been paid to a Claimant to satisfy an attorney's fee. *Hendricks* and *Curiel* do not provide guidance on this issue.

11. Once a Claimant has begun receiving weekly payment of disability for more than 150 days, Defendants cannot terminate payment of those benefits without an order of the Commission. S.C. Code Ann. § 42-9-260 (1976). This is true whether the weekly payments represent temporary or permanent disability benefits. The Act recognizes the hardship that would be placed on a Claimant if she were to lose the weekly disability payments she was receiving prior to an award of permanent disability benefits being finalized. While the award of permanent disability benefits is pending on appeal, Claimant is not secure in her award of permanent disability benefits. Her weekly payment of disability benefits are her only source of living wages prior to the appeal being finalized. It would be unconscionable to require Claimants to pay to their attorneys the weekly benefits they were receiving before the attorney had successfully defended an appeal. Further, such a result is not permitted by the provisions of law that, unlike *Curiel* and *Hendricks*, deal directly with attorneys' fees.
12. Reg. 67-1205(C)(2) does not entitle Counsel to 33.3% of all benefits paid to Claimant post-MMI; it entitles him to 33.3% of the "settlement or award". The award was not finalized until the time for appeal of the Full Commission's Decision and Order had run pursuant to § 42-17-60. The amount awarded at the time the award became final, \$179,077.14, is the amount of compensation from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.²
13. "Compensation" means "the money allowance payable to an employee . . ." S.C. Code Ann. § 42-1-100. (Emphasis added). The use of the adjective "payable" to modify "money allowance" limits the definition of "compensation" as used in Reg. 67-1205 to include only "money allowance" that is "payable", and not "money allowance" that has already been "paid" in the past.³

² The Majority disagrees with the Dissent that the "award" became finalized on the date the Full Commission issued its Decision and Order, October 17th, 2017, and that any benefits paid subsequent to this date are subject to be reduced to pay attorneys' fees. Workers' Compensation is unique in that certain circumstances, present in this case, allow a Claimant to be on a running award of weekly benefits while a decision and appeal are pending. It is the Majority's position that the benefits paid weekly to Claimant while the time for appeal had not been exhausted were still not "secure". The Full Commission's Decision and Order did not become the law of the case until the time for appeal had been exhausted. It was not until the Decision and Order became the law of the case that Defendants paid the full award and could properly terminate weekly payments of compensation, thus finalizing the award.

³ The Dissent raises the concern that our analysis overly narrows the definition and application of "compensation" in a manner that could impact our interpretation of this term as it is used in other parts of the Act. We are only analyzing

14. Counsel would have us award attorneys' fees from the "money allowance" that has already been "paid" to the Claimant. We decline to adopt this interpretation. Doing so would create the absurd result where an attorney could force his own client to pay back to the attorney weekly benefits the Claimant had already received. In this particular instance, the amount of permanent disability benefits awarded in the lump sum exceeded the amount of weekly benefits Claimant received from the date of MMI through the date the award was finalized. However, it is possible for the number of weeks in which a Claimant is receiving weekly benefits while the matter is pending on appeal to exceed the number of weeks awarded as permanent disability. Were we to adopt Counsel's position that all compensation paid post-MMI is subject to attorneys' fees, this would create instances where a Claimant would owe her attorney a portion of the benefits already "paid" to her, thus rendering the Claimant a debtor and her attorney her creditor. We hold that such an interpretation is not consistent with Reg. 67-1205 or the purpose of the Workers' Compensation Act. *See Cokeley v. Robert Lee, Inc.*, 197 S.C. 157, 14 S.E.2d 889, 893-4 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results.")

15. Reg. 67-1205(C)(2) provides "If the attorney *secures* the payment of permanent disability later, the attorney may charge up to, but not more than 33.3% of the *settlement or award*." Subsection (C)(2) does not entitle Counsel to 33.3% of the "permanent disability", it entitles him to 33.3% of the "award". In order for an attorney to be entitled to a contingency fee under subsection (C)(2), he must "secure" the payment of the compensation. The award of compensation was not "secure" until the attorney successfully defended the award to

"compensation" as it is used in Reg. 67-1205(C)(2) for the purposes of determining an award of attorney's fees. The term as it is used elsewhere in the Act will be analyzed as the context requires, consistent with § 42-1-20.

finality. At the time the award became final, the Defendants paid the commuted value of the outstanding benefits in the amount of \$179,077.14. It is this amount from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.

16. While Counsel advocates that Reg. 67-1205 entitles him to an award of attorneys' fees of 33.3% of the value of the permanent and total disability award at the time Claimant reaches MMI, we hold that Reg. 67-1205 only allows an award of attorneys' fees of 33.3% of the value of the permanent and total disability award remaining at the time the attorney "secures the payment of compensation."
17. We cannot apply Reg. 67-1205 in the strained manner advocated by Counsel. Reg. 67-1205 does not state that an attorney is entitled to 33.3% of the "permanent disability", it states the attorney is entitled to 33.3% of the "settlement or award".
18. "In doubtful cases, the application of these regulation shall be in favor of the injured employee." S.C. Code Ann. Regs. 67-201(B) (2014 Supp.) Should a court construe any terms in Reg. 67-1205 as doubtful, we find it is objectively in Claimant's favor to have the amount in dispute paid to her instead of her lawyer. Her lawyer has already collected \$69,499.57, and continues to practice law. Claimant, meanwhile, is permanently and totally disabled, and the balance of the award is all the money that can be provided by the Act for her to live on for the rest of her life.
19. The record is devoid of any evidence showing Commission policy is to award an attorney 33.3% of all post-MMI benefits when the Claimant continues to receive weekly benefits before the award is finalized. Counsel has the burden of proving he is entitled to the fee he is requesting. It is not the Commission's policy to grant a contingency fee to be deducted from all benefits paid post-MMI without taking into consideration when the award becomes final and when payment of the compensation is secured by the attorney's representation.
20. The Commission is prohibited by law from making any change to its policies or procedures regarding the approval of attorneys' fees without approval of the General Assembly. See S.C. Code Ann. § 42-3-185. If Counsel wants the policy changed to allow attorneys' fees to be deducted from all benefits paid post-MMI, he must secure such a change through the General Assembly.

21. The General Assembly gave sole authority to approve fees for attorneys to the Commission. *See* S.C. Code Ann. § 42-15-90. Section 42-15-90 reads, in pertinent part, "Attorney fees . . . for services under this title are subject to the approval of the commission" Section 42-15-90 must be read in context with § 42-3-185. Section 42-3-185 provides

Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly.

S.C. Code Ann. § 42-3-185 (1976, as amended).

It is clear from the two statutes, read together, that it is the intent of the General Assembly that changes in the manner in which the Commission approves attorneys' fees must be done with approval by the General Assembly in the method prescribed.

22. There is sound reasoning behind the General Assembly's decision to allow limitations not present in tort cases on the amount of the injured worker's benefits that could be taken to pay attorneys' fees. Benefits available under the Workers' Compensation Act are limited to those expressly provided in the Act. Remedies available at common law such as general damages, pain and suffering, loss of consortium, punitive damages, etc., are not available to the workers' compensation claimant. Thus a limitation on attorneys' fees is appropriate. The South Carolina Attorney General has long been of the opinion that § 42-15-90 protects society "from the wrongs to injured employees and their dependents that would likely follow if some restrictions were not placed on the costs of legal services rendered injured workers in the prosecution of their claims for compensation". S.C. Op. Atty. Gen. 185 (1986).
23. "The principal purpose of [§ 42-15-90] is to protect the workman from the charging of excessive fees". *See* S.C. Op. Atty. Gen. 185 (1986), *citing* 1936-37 S.C. Op. Atty. Gen., p. 299.
24. The requested fee in this particular case is unreasonable under Rule 1.5 of the South Carolina Rules of Professional Conduct. The Commission requires that requested attorneys' fees comply with the South Carolina Supreme Court Disciplinary Rules on

determining a reasonable fee. See S.C. Code Ann. Regs. 67-1205(A) and (B). Rule 1.5(a)(3) of the Rules of Professional Conduct and *Glasscock v. Glasscock* require when considering approval of an attorney's fee for the tribunal to consider "customary legal fees for similar service" and "the fee customarily charged in the locality for similar legal service". Counsel has not entered into the record or cited one single example of a fee similar to the one in which he is requesting having ever been awarded by the Commission. As such, we find his request is not for "customary legal fees for similar service".

25. Counsel asserts that it was somehow improper for the Commission to notice certain parties of the Hearings in this matter. We find no error, as Commission Hearings are open to the public in accordance with § 42-3-170. Defendants are clearly a party to the underlying claim.
26. Counsel implies that the single Commissioner somehow acted improperly by consulting with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities. First, we hold that the record is devoid of any evidence that the single Commissioner did so in this instance. Second, we hold that, had the single Commissioner consulted with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities, such action would have been wholly proper, as it is expressly permitted by the Code of Judicial Conduct. See Canon(3)(B)(7)(c), CJC, Rule 501 SCACR.
27. Counsel asserts that the single Commissioner did not handle his fee petition in a timely manner consistent with Reg. 67-1204(F) by not "immediately" scheduling a hearing. The single Commissioner found that the Form 61 did not comply with Reg. 67-1205 on January 9th, 2018. The Hearing Notice was issued eight days later on January 17th, 2018, the Hearing was held on February 12th, 2018, and the decision of the single Commissioner was issued on March 6th, 2018. We do not see how the single Commissioner could have disposed of the matter in a timelier manner, and hold that the single Commissioner fully and timely complied with the provisions of Reg. 67-1204(F).
28. We hold that Counsel has received adequate remuneration for his services in this case. Counsel was retained in April of 2014 and the award became final in November of 2017. On September 12th, 2016, he received \$9,866.88, and this Decision and Order awards him an additional \$59,632.69, for a total of \$69,499.57.

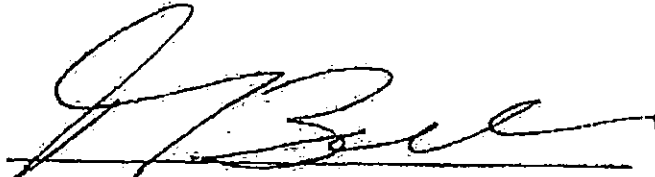
29. In Counsel's correspondence, briefs, and oral statements, Counsel repeatedly refers to the single Commissioner as a "lay commissioner." We find as a fact and rule as a matter of law that the Honorable H. Gene McCaskill is a Workers' Compensation Commissioner appointed and qualified in accordance with § 42-3-20. The Honorable H. Gene McCaskill has been appointed as a Workers' Compensation Commissioner on three occasions by two different Governors, and has been approved unanimously by the Senate on all three occasions. The Honorable H. Gene McCaskill is fully and lawfully qualified, competent, and capable of serving as a Workers' Compensation Commissioner.

ORDER

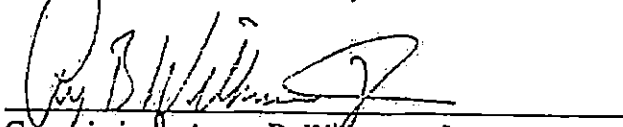
IT IS ORDERED that Counsel's request for attorneys' fees above and beyond \$59,632.69 is DENIED.

IT IS ORDERED that Counsel shall certify in writing to the Commission that he has paid \$13,461.76 to Claimant within thirty (30) days of the date of this Order.

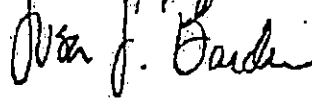
IT IS SO ORDERED!



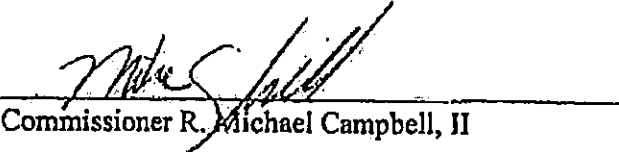
Commissioner T. Scott Beck, Chairman



Commissioner Avery B. Wilkerson, Jr.



Commissioner Susan S. Barden



Commissioner R. Michael Campbell, II

CONCURRING IN PART AND DISSENTING IN PART

We concur in part with the majority opinion and would affirm the Single Commissioner's finding that Claimant's award of benefits could not be determined with finality until the date of the Full Commission's Decision and Order on October 17, 2017, when the award became the law of the case. We respectfully dissent from the majority opinion and would reverse the Order of the Single Commissioner in this case on the issue of whether the attorney fees at issue are calculated from the date that the appeal time ran on the Full Commission Decision and Order and the commuted value of the remaining benefits were paid in a lump sum. We find that the attorney's fees in this particular matter are instead calculated from the date of the final order of the

Commission, which is the Full Commission Decision and Order dated October 17, 2017. We base our opinion on the following analysis below.

Supporting case law holds that, essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. *Smith v. NCCI, Inc.*, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006); *Curiel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2007). Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits. Maximum medical improvement terminating right to temporary total disability benefits is a factual determination by the Workers Compensation Commission. *Id.*

In this case, MMI was a controverted issue and the Single Commissioner's determination of MMI on October 17, 2016 signaled the end of Claimant's temporary benefits. While Claimant continued to receive weekly total disability benefits after the date maximum medical improvement as determined by the Single Commissioner. Claimant's determination of total and permanent disability was not awarded until October 17, 2017, the date of the Full Commission Decision and Order.

Counsel's argument that the date for the calculation of his attorney's fee award should be the date of maximum medical improvement, October 12, 2016, fails. In this case, Counsel had previously secured additional payment of temporary compensation for his client on a Form 15. Regulation 67-1205(c)(2) states, "If the attorney secures the payment of permanent disability later, the attorney may charge...up to but not more than 33.3% of the settlement or award."

The definition of award is set forth in Black's Law Dictionary. An award is "[a] final judgment or decision." The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989); *see also Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 407 (1991).

S.C. Code Ann. Section 42-17-50 provides for an "application for review" of a single commissioner's decision. Pursuant to the statute governing review, the Full Commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and if proper, amend the award. *Id.* The Full

Commission shall weigh the evidence as presented at the initial hearing and, if good grounds are shown, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *Pack v. State Dept. Of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009). Although it is logical for the Full Commission to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992); see also *Brayboy v. Clark Heating Co.*, 306 S.C. 56, 409 S.E.2d 767 (1991) (Full Commission may review an award of a single commissioner and make its own findings of fact and conclusions of law).

We find Counsel is entitled to attorney's fees as of October 17, 2017, the date of the Full Commission Decision and Order and is not subject to the 30 day appeal period. S.C. Code Ann. Section 42-17-60 states, "an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award ..., may appeal from the decision of the commission to the court of appeals." Section 42-17-50 goes on to state, "In case of an appeal from the decision of the commission on questions of law, the appeal does not act as a supersedeas and, after that time, the employer is required to make weekly payments of compensation..." The thirty-day supersedeas provision of this section should be construed as requiring weekly payments provided for in the award of the Commission to continue pending determination of the employer's appeal. *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 115 S.E.2d 57 (1960). The legislature intended that weekly payments ordered in an award are to be made until the question at issue is fully determined upon appeal. *Bagwell v. Ernest Burrell, Inc.*, 227 S.C. 168, 87 S.E.2d 583 (1955).

In the present case, there was no appeal from the Decision and Order of the Commission granting Claimant permanent and total disability benefits. As such, the issue of whether or not there was a thirty (30) day supersedeas pending outcome of an appeal is moot. As there was no appeal from the Full Commission Decision and Order, the Findings of Fact and Conclusions of Law of the Full Commission were final and "fully determined" as of the date of the Full Commission Order on October 17, 2017. An award of the Commission is not effectuated until the final Decision and Order of the Full Commission is entered. In this particular matter, Counsel's attorney's fees should be calculated as of the date of the Commission's final Order.

"Every state has some type of provision for subjecting the claimants' attorneys' fees to the supervision of a commission or court handling compensation administration." Lex K. Larson, *Larson's Workers' Compensation* § 133.01(1) (Matthew Bender, Rev. Ed.) Attorney's fees in South Carolina are "subject to the approval of the Commission." S.C. Code Section 42-15-90. The South Carolina Legislature has directed the Commission to supervise both medical payments and attorney's fees. In addition, the Workers' Compensation Commission has promulgated Regs. 67-1204 and 1205 in governing supervision of attorney's fees.

Regulation 67-1205(c) is applicable to this case and states an attorney may charge up to 33.3% of the total amount of compensation. As noted in the majority opinion, the definition of compensation includes the word "payable". The majority interprets this definition to limit the term "compensation" to only those payments that have not yet been paid. This interpretation strictly narrows the definition and practical application as to what compensation is. We find the term "payable" in the definition of compensation is broad and applies to any and all payments that were "payable" at their inception, even if at the time of the award some had already been paid.

We also look to case law governing statutory construction to define the term compensation as defined in S.C. Code Ann. Section 42-1-100. Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). Should compensation only be that payable in the future, it would change the characterization of payments of compensation that have already been paid, essentially creating a third class of compensation payments. There would be temporary compensation, permanent compensation previously paid, and permanent compensation to be paid in the future. There is no statutory or case law authority for such a designation. An example of a statute that could not be reconciled under the majority's interpretation is found in Section 42-9-10. This section provides that in no case may the period covered by the compensation exceed five hundred (500) hundred weeks (with exception). If compensation payments are only compensation when they are payable in the future, then the period of compensation under this statute would be indefinite. In addition WCC Forms 18 and 19 designate and report permanent compensation paid, not compensation payable in the future.

As noted above, the statutes governing review of a Single Commissioner's decision places the Full Commission in the same posture as the Single Commissioner for purposes of the review. The Full Commission is the ultimate fact finder. As such, any finding as to whether the Single

Commissioner abused his discretion would not be the applicable standard for the Full Commission, but rather the Court of Appeals or a higher court. See *Kiriakides v. School Dist. of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). As the ultimate finders of fact, the Full Commission must analyze the application of the traditional factors of review of an attorney's fee award.

The factors that should be reviewed in determining a reasonable attorney's fee in any matter are: (1) The nature, extent, and difficulty of the case; (2) The time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991).

With regard to the first *Glasscock* factor, the nature, extent and difficulty of the case, this case involved the pursuit and obtainment of a finding of "permanent and total disability." This is the maximum benefit that can be obtained in a workers' compensation matter, except for matters involving catastrophic injuries such as severe brain damage. In addition, the contested issues included whether Claimant was at maximum medical improvement and whether she was entitled to lifetime medical treatment despite competing medical opinions. Although the Record does not indicate the presentation of any novel issues, the parties' APA Submissions totaled 249 pages in addition to the deposition transcripts of Dr. Lembo and Dr. Healy.

As to the second *Glasscock* factor regarding time, Workers' Compensation attorneys are traditionally engaged with contingency contracts that are subject to Commission approval, so the factor of the number of hours expended by an attorney is not usually directly considered by the Commission. However, it may be relevant in the aspect of considering the complexity of a matter. Counsel cites in his Form 61A that he has hundreds of hours in this case. It is unknown how many hours may have been performed by Counsel for the increase in temporary compensation. It is noted that Counsel previously obtained a tangible result for the Claimant in increasing her compensation rate; a fee has already been approved by order of the Commission for that pursuit. It was calculated from the back payment of the increase in award. As indicated herein, future payments of temporary total are not subject to an award of attorney's fees by custom which is codified in Regulation 67-1205.

As to professional standing and experience of counsel, the third *Glasscock* factor, Counsel (McDaniel) regularly appears before the Workers' Compensation Commission exclusively

representing injured workers. His Form 61 A filed with the Commission indicates that he has been practicing for over 41 years.

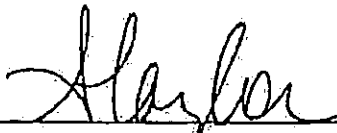
This matter involves that of a contingency contract as outlined in *Glasscock* factor number four. This is the method of payment customarily and traditionally before the Commission.

The determining factors in this matter involve what beneficial results were obtained and what is the customary legal fees/calculation applied by the Commission, which are the fifth and sixth *Glasscock* factors. The benefit obtained in this matter was not secured until the final award of the Commission. The award of attorney's fees is customarily calculated from the amounts that are secured by counsel in a case pursuant to an award. In most circumstances, including the facts of this underlying claim, amounts from a running award of weekly payments are not customarily subject to attorney's fees, as they are automated. The pivotal issue in the workers compensation award of attorney fees is what is customary. No matter what the characterization of the compensation is, temporary or permanent, the fees are granted to the amount of the award that is obtained by the efforts of the attorney. Attorney's fees are not traditionally granted to an amount based on a running award under the facts of this case. The Regulations cite specific situations in which the Commission notes that fees are not payable on a running award. For example, an award of attorney's fees are not made on continuing temporary total benefits or where a Claimant's attorney has defeated the termination of a running award. In this case, a fee was allowed on back temporary total disability benefits as the Claimant's attorney successfully obtained a beneficial increase; but, although the attorney obtained the increased, running award for the Claimant, he is not entitled to a fee of the continuing temporary compensation. This particular custom is cited within Regulation 67-1205(c)(2), itself. Again, R. 67-1205(c)(2) allows a fee of 33.3% of a later award or settlement. In this case, the benefit was not obtained until Counsel effectuated and secured the final award as stated above.

We find that due to the factors reviewed that the award of attorney's fees in this matter should be calculated as 33.3% of the amount awarded to Claimant as of the date of the final award of the Commission, which is the Full Commission Decision and Order dated October 17, 2017. For the reasons as set forth above, we would affirm in part and reverse in part the Order of the Single Commissioner.



Commissioner Melody L. James



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia on May 30, 2018

**DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO.: 1307922

Pamela O. Cartee,

Claimant,

v.

S.C. Judicial Department,

Employer,

&

State Accident Fund

Carrier,

**Hearing held in Richland County,
South Carolina on May 21st, 2018.**

Appearances: **Mr. Preston F. McDaniel, on his own behalf.**
 No appearance was made by the Claimant.
 No appearance was made by Defendants.

Purpose of Hearing: **To resolve the dispute of Attorney Fees and Costs.**

Filed: **June 6, 2022**

STATEMENT OF THE CASE

This matter comes before the Workers' Compensation Commission on appeal from a Decision and Order of the single Commissioner dated March 6th, 2018, denying the Petition for Additional Attorneys' Fees requested by Claimant's attorney, Preston McDaniel ("Counsel") on his Form 61. The purpose of this Hearing is to determine an appropriate award of attorneys' fees. The merits of the underlying claim were decided by Decision and Order of the Appellate Panel dated October 17th, 2017.

ORDER OF THE SINGLE COMMISSIONER

On March 6th, 2018, the single Commissioner made the following Findings of Fact and Rulings of Law:

1. The question at bar is whether Claimant's Counsel is entitled to additional requested attorney's fees.
2. Determination of this question rests in the plain reading of Regulation 67-1205(c)(2) which reads in part, "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."
3. I cannot find any persuasive authority for an award beyond that amount. I awarded the Claimant permanent and total disability on 04/13/17. While that award was on appeal, the case was not final and, as such, it would be premature to determine an award. Additionally, while on appeal, that Order could have been awarded to a greater award or a lesser award. The Full Commission could have vacated my Order and remanded the case for a hearing de novo. The determination of the award with finality could not be reached until my Order became the law of the case.
4. Once my order was the law of the case, The Defendants then paid the Claimant the commuted value of the award - \$179,077.14. The Form 19 reflects this payment. Based on the payment, Claimant's counsel is entitled to an attorney's fee of 33.3% of that amount which is \$59,632.69. I have previously ordered payment of that amount. I cannot find and counsel has not submitted any authority which supplants Regulation 67-1205(c)(2). As such, the payment of any additional attorney's fees must be consistent with 67-1205(c)(2).

Therefore, the petition for additional attorney's fees is denied.

DECISION OF THE COMMISSION

Based on our review of the record and consideration of the position of Counsel, we make the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. Counsel first secured compensation payable to the Claimant in the form of a lump sum payment of back-owed Temporary Total Disability by Order dated July 28th, 2016. Counsel secured the payment of compensation in the amount of \$29,600.93. On September 12th, 2016, the Commission awarded contingency attorneys' fees to Counsel in the amount of \$9,866.98, to be withheld from the amount awarded to Claimant in accordance with Reg. 67-1205(C)(2).
2. Counsel continued to represent Claimant. On April 17th, 2017 the single Commissioner awarded Claimant permanent and total disability benefits under § 42-9-10 and lifetime medical care under § 42-15-60. Defendants appealed the award to the Commission. While on appeal, Claimant remained on a running award of weekly total disability benefits. On October 17th, 2017, the Appellate Panel fully affirmed the award of the single Commissioner. Defendants did not seek an appeal of the award in accordance with § 42-17-60, and the award of the Full Commission became the law of the case on or about November 16th, 2017.
3. On or about December 13th, 2017, Defendants filed a WCC Form 19 with the Commission, showing that it had paid the award to Claimant in a lump sum in the amount of \$179,077.14. The Form 19 showed that Claimant had received 230 weeks of total disability benefits, paid weekly, that terminated on December 1st, 2017. The \$179,077.14 payment represented the commuted value, calculated in accordance with Reg. 67-1605, of the remaining weeks of total disability under § 42-9-10 that were due and payable at the time the award of the Full Commission became final.
4. On December 8th, 2017, Counsel filed a Form 61 attorney fee petition, asking for the Commission to award him a second contingency fee in the amount of \$73,094.45. According to the disbursement statement provided by Counsel, this amount was to be

withheld from the \$179,077.14 awarded to Claimant, purportedly pursuant to Reg. 67-1205(C)(2). \$73,094.45 represents 40.82% of \$179,077.14. Counsel asserts he is entitled to an award of attorneys' fees of 33.3% of all benefits paid to Claimant post-maximum medical improvement.

5. On January 9th, 2018, the single Commissioner sent an email to Counsel stating the following

I have reviewed your fee petition in Pamela Cartee v. SC Judicial Department several times. I have also reviewed the law I believe to be applicable. I can only find justification for a fee of \$59,632.69. If you wish to amend your Form 61 to reflect this amount as your fee, I will approve the fee petition. Otherwise, I am glad to set the matter for a hearing pursuant to the Act. I am happy to hear your position.

6. On January 8th or 9th 2018, Counsel sent a letter to the single Commissioner wherein he averred that he had come in person to the Commission three times without notice in an attempt to initiate communication with the Commissioner regarding the Petition for Attorneys' Fees currently pending before the Commissioner for adjudication. The single Commissioner declined to communicate with him about the matter under review.
7. On January 17th, 2018, the single Commissioner issued a Hearing Notice, setting the matter for the next available date, which was February 12th, 2018.
8. The Hearing was conducted on February 12th, 2018. Counsel was given the opportunity to submit evidence and argue his position.
9. On February 21st, 2018, the single Commissioner issued an Interim Order approving disbursement to Counsel of the amount of fees not in dispute.
10. On February 21st, 2018, Counsel sent a letter to the single Commissioner threatening to "take this matter up with the Supreme Court".
11. On February 22nd, 2018, Counsel sent a letter to the single Commissioner stating that he would hold off on filing anything with the courts if the Commissioner would engage in communication with him about the matter under review.
12. On March 2nd, 2018, Counsel sent a revised Form 61 that changed the amount of the final award listed from the total amount of all benefits, both temporary and permanent, paid, to only the amount of benefits paid post-MMI, but asked for the same amount, \$73,094.45, to be awarded as attorneys' fees.

13. On March 6th, 2018, the single Commissioner issued his Decision and Order Denying the Petition for Additional Attorneys' Fees.
14. On March 7th, 2018, Counsel sent a letter to the single Commissioner reiterating his threat to file litigation with the courts.
15. On March 13th, 2018, Counsel sent a letter to the Commission's Judicial Director, asking her for legal advice.
16. On March 15th, 2018, the Commission's Judicial Director sent an email to Counsel stating "If you file a WCC Form 30 appealing an award of attorneys' fees, the Commission will set the matter for a Hearing in accordance with Section 42-17-50. All parties of record, and the Claimant individually, should be served with any appellate documents."
17. On March 20th, 2018, Counsel filed a WCC Form 30 Request for Full Commission Review, raising seven grounds for appeal.
18. In accordance with longstanding Commission policy, the single Commissioner requested that the appeal be heard En Banc in accordance with Reg. 67-709(B)(1), since the appeal involved novel issues of law and regarded attorneys' fees.
19. On March 23rd, 2018, Counsel sent an email to Commission's General Counsel asking for a legal opinion, and again threatening civil litigation.
20. On April 19th, 2018, Counsel served the Commission with a Temporary Restraining Order Issued Without Notice Pursuant to Rule 65(B), SCRPC, restraining the Commission from taking further action on the Appeal filed by Counsel, that was issued by the Court of Common Pleas for the 4th Judicial Circuit. Despite the prohibition by the court on the Commission taking any action on the Appeal, Counsel filed a Brief of Appellant on April 22nd, 2018.
21. Also on April 19th, 2018, Counsel served the Commission with a Summons and Complaint, listing Counsel in his personal capacity as the Plaintiff and the Commission as Defendants. That matter was referred to the South Carolina Attorney General's Office for defense, and, as of the date of this Decision and Order, is currently pending before the Court of Common Pleas for the 4th Judicial Circuit on Defendant's Motion to Dismiss.
22. On April 27th, 2018, the Temporary Restraining Order expired pursuant to its terms and has not been extended. The Commission is unaware at the time of drafting of any legal prohibition on its issuance of this Decision and Order.

CONCLUSIONS OF LAW

1. Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission. S.C. Code Ann. § 42-15-90 (1976).
2. Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly. S.C. Code Ann. § 42-3-185 (1976).
3. Pursuant to 42-1-100 "compensation" is the money allowance *payable* to an employee or to his dependents.
4. Pursuant to Regulation 67-1205(B) "If the parties agree to a contingent fee contract, the fee is deemed reasonable when the following requirements are met and the requested fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee." S.C. Code Regs. 67-1205(B).
5. The Act requires that "as used in this Title, unless the context otherwise requires, the terms dealt with in §§ 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections." S.C. Code Ann. § 42-1-20.
6. The first sentence of R.67-1205(C) states that "[a]n attorney may charge up to, but not more than, 33.3% of the total amount of *compensation*, except in the following situations, where the attorney shall set the fee as instructed." Reg. 67-1205(C) (Emphasis added).
7. "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439,445 (2009). "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*¹

¹ The abuse of discretion standard is the standard of review to be followed by the courts on appeal; it is not the standard followed by the Commission in this review. The standard of review on Review and Rehearing by the Commission is set forth in § 42-17-50, which is the standard of review applied by the majority in this decision.

8. The single Commissioner held "The determination of the award with finality could not be reached until my order became the law of the case." We concur. This is a Conclusion of Law that the single Commissioner made, as he is authorized to do under § 1-23-350. The amount of compensation that is to be awarded cannot be determined until the Decision and Order making that award is final.

9. In a footnote to its Decision, the South Carolina Court of Appeals held

Essentially, worker's compensation benefits accrue along a time continuum: TTD benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. See S.C.Code Ann. §§ 42-9-10, -20, -30 (1976); S.C.Code Ann. § 42-9-260 (1996); 25A S.C.Code Ann.Reg. 67-507 (1990) (repealed by 21 S.C.Reg., No. 6, Part 2 at 439, effective June 27, 1997); O'Banner v. Westinghouse, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (Ct.App.1995). To require an employer to prove a claimant's disability ended before terminating TTD benefits dilutes the distinction between temporary and permanent disability payments, and it dilutes MMI as the definitive moment when a transition between the two different types of payments is accomplished.

Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999).

10. The language cited from *Hendricks*, above, makes it clear that we cannot award attorneys' fees in the manner requested by Counsel. Post-MMI benefits may be awarded as permanent disability benefits. However, Credit paid to the Employer/Carrier for benefits overpaid is not money allowance payable as described in section 42-1-100, and any funds allocated from the award for the payment of such credit may not be reduced to collect attorneys' fees. The footnote Counsel relies upon was favorably cited by our Supreme Court in *Curtel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d 482 (2006). *Curtel* involved a dispute over the Commissioner's findings regarding maximum medical improvement and temporary total disability. *Curtel v. Environmental Management Services*, 376 S.C. 23, 30, 655 S.E.2d 482, 486 (2006). Neither *Hendricks* nor *Curtel* involved a dispute over an award of attorneys' fees. In the present case, we are not concerned with whether the benefits paid to Claimant post-MMI were temporary or permanent disability benefits. Our concern is that it is not appropriate to allow an attorney to take back benefits that have already been paid to a Claimant to satisfy an attorney's fee. *Hendricks* and *Curtel* do not provide guidance on this issue.

11. Once a Claimant has begun receiving weekly payment of disability for more than 150 days, Defendants cannot terminate payment of those benefits without an order of the Commission. S.C. Code Ann. § 42-9-260 (1976). This is true whether the weekly payments represent temporary or permanent disability benefits. The Act recognizes the hardship that would be placed on a Claimant if she were to lose the weekly disability payments she was receiving prior to an award of permanent disability benefits being finalized. While the award of permanent disability benefits is pending on appeal, Claimant is not secure in her award of permanent disability benefits. Her weekly payment of disability benefits are her only source of living wages prior to the appeal being finalized. It would be unconscionable to require Claimants to pay to their attorneys the weekly benefits they were receiving before the attorney had successfully defended an appeal. Further, such a result is not permitted by the provisions of law that, unlike *Curriel* and *Hendricks*, deal directly with attorneys' fees.
12. Reg. 67-1205(C)(2) does not entitle Counsel to 33.3% of all benefits paid to Claimant post-MMI; it entitles him to 33.3% of the "settlement or award". The award was not finalized until the time for appeal of the Full Commission's Decision and Order had run pursuant to § 42-17-60. The amount awarded at the time the award became final, \$179,077.14, is the amount of compensation from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.²
13. "Compensation" means "the money allowance payable to an employee . . ." S.C. Code Ann. § 42-1-100. (Emphasis added). The use of the adjective "payable" to modify "money allowance" limits the definition of "compensation" as used in Reg. 67-1205 to include only "money allowance" that is "payable", and not "money allowance" that has already been "paid" in the past.³

² The Majority disagrees with the Dissent that the "award" became finalized on the date the Full Commission issued its Decision and Order, October 17th, 2017, and that any benefits paid subsequent to this date are subject to be reduced to pay attorneys' fees. Workers' Compensation is unique in that certain circumstances, present in this case, allow a Claimant to be on a running award of weekly benefits while a decision and appeal are pending. It is the Majority's position that the benefits paid weekly to Claimant while the time for appeal had not been exhausted were still not "secure". The Full Commission's Decision and Order did not become the law of the case until the time for appeal had been exhausted. It was not until the Decision and Order became the law of the case that Defendants paid the full award and could properly terminate weekly payments of compensation, thus finalizing the award.

³ The Dissent raises the concern that our analysis overly narrows the definition and application of "compensation" in a manner that could impact our interpretation of this term as it is used in other parts of the Act. We are only analyzing

14. Counsel would have us award attorneys' fees from the "money allowance" that has already been "paid" to the Claimant. We decline to adopt this interpretation. Doing so would create the absurd result where an attorney could force his own client to pay back to the attorney weekly benefits the Claimant had already received. In this particular instance, the amount of permanent disability benefits awarded in the lump sum exceeded the amount of weekly benefits Claimant received from the date of MMI through the date the award was finalized. However, it is possible for the number of weeks in which a Claimant is receiving weekly benefits while the matter is pending on appeal to exceed the number of weeks awarded as permanent disability. Were we to adopt Counsel's position that all compensation paid post-MMI is subject to attorneys' fees, this would create instances where a Claimant would owe her attorney a portion of the benefits already "paid" to her, thus rendering the Claimant a debtor and her attorney her creditor. We hold that such an interpretation is not consistent with Reg. 67-1205 or the purpose of the Workers' Compensation Act. See *Cokeley v. Robert Lee, Inc.*, 197 S.C. 157, 14 S.E.2d 889, 893-4 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results.")

15. Reg. 67-1205(C)(2) provides "If the attorney *secures* the payment of permanent disability later, the attorney may charge up to, but not more than 33.3% of the *settlement or award*." Subsection (C)(2) does not entitle Counsel to 33.3% of the "permanent disability", it entitles him to 33.3% of the "award". In order for an attorney to be entitled to a contingency fee under subsection (C)(2), he must "secure" the payment of the compensation. The award of compensation was not "secure" until the attorney successfully defended the award to

"compensation" as it is used in Reg. 67-1205(C)(2) for the purposes of determining an award of attorney's fees. The term as it is used elsewhere in the Act will be analyzed as the context requires, consistent with § 42-1-20.

finality. At the time the award became final, the Defendants paid the commuted value of the outstanding benefits in the amount of \$179,077.14. It is this amount from which Reg. 67-1205(C)(2) allows Counsel to claim a contingency fee.

16. While Counsel advocates that Reg. 67-1205 entitles him to an award of attorneys' fees of 33.3% of the value of the permanent and total disability award at the time Claimant reaches MMI, we hold that Reg. 67-1205 only allows an award of attorneys' fees of 33.3% of the value of the permanent and total disability award remaining at the time the attorney "secures the payment of compensation."
17. We cannot apply Reg. 67-1205 in the strained manner advocated by Counsel. Reg. 67-1205 does not state that an attorney is entitled to 33.3% of the "permanent disability", it states the attorney is entitled to 33.3% of the "settlement or award".
18. "In doubtful cases, the application of these regulation shall be in favor of the injured employee." S.C. Code Ann. Regs. 67-201(B) (2014 Supp.) Should a court construe any terms in Reg. 67-1205 as doubtful, we find it is objectively in Claimant's favor to have the amount in dispute paid to her instead of her lawyer. Her lawyer has already collected \$69,499.57, and continues to practice law. Claimant, meanwhile, is permanently and totally disabled, and the balance of the award is all the money that can be provided by the Act for her to live on for the rest of her life.
19. The record is devoid of any evidence showing Commission policy is to award an attorney 33.3% of all post-MMI benefits when the Claimant continues to receive weekly benefits before the award is finalized. Counsel has the burden of proving he is entitled to the fee he is requesting. It is not the Commission's policy to grant a contingency fee to be deducted from all benefits paid post-MMI without taking into consideration when the award becomes final and when payment of the compensation is secured by the attorney's representation.
20. The Commission is prohibited by law from making any change to its policies or procedures regarding the approval of attorneys' fees without approval of the General Assembly. See S.C. Code Ann. § 42-3-185. If Counsel wants the policy changed to allow attorneys' fees to be deducted from all benefits paid post-MMI, he must secure such a change through the General Assembly.

21. The General Assembly gave sole authority to approve fees for attorneys to the Commission. See S.C. Code Ann. § 42-15-90. Section 42-15-90 reads, in pertinent part, "Attorney fees . . . for services under this title are subject to the approval of the commission" Section 42-15-90 must be read in context with § 42-3-185. Section 42-3-185 provides

Any policies or procedures implementing the provisions of Section 42-15-90 shall become effective only when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act, which proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent Resolution of the General Assembly.

S.C. Code Ann. § 42-3-185 (1976, as amended).

It is clear from the two statutes, read together, that it is the intent of the General Assembly that changes in the manner in which the Commission approves attorneys' fees must be done with approval by the General Assembly in the method prescribed.

22. There is sound reasoning behind the General Assembly's decision to allow limitations not present in tort cases on the amount of the injured worker's benefits that could be taken to pay attorneys' fees. Benefits available under the Workers' Compensation Act are limited to those expressly provided in the Act. Remedies available at common law such as general damages, pain and suffering, loss of consortium, punitive damages, etc., are not available to the workers' compensation claimant. Thus a limitation on attorneys' fees is appropriate. The South Carolina Attorney General has long been of the opinion that § 42-15-90 protects society "from the wrongs to injured employees and their dependents that would likely follow if some restrictions were not placed on the costs of legal services rendered injured workers in the prosecution of their claims for compensation". S.C. Op. Atty. Gen. 185 (1986).
23. "The principal purpose of [§ 42-15-90] is to protect the workman from the charging of excessive fees". See S.C. Op. Atty. Gen. 185 (1986), *citing* 1936-37 S.C. Op. Atty. Gen., p. 299.
24. The requested fee in this particular case is unreasonable under Rule 1.5 of the South Carolina Rules of Professional Conduct. The Commission requires that requested attorneys' fees comply with the South Carolina Supreme Court Disciplinary Rules on

determining a reasonable fee. See S.C. Code Ann. Regs. 67-1205(A) and (B). Rule 1.5(a)(3) of the Rules of Professional Conduct and *Glasscock v. Glasscock* require when considering approval of an attorney's fee for the tribunal to consider "customary legal fees for similar service" and "the fee customarily charged in the locality for similar legal service". Counsel has not entered into the record or cited one single example of a fee similar to the one in which he is requesting having ever been awarded by the Commission. As such, we find his request is not for "customary legal fees for similar service".

25. Counsel asserts that it was somehow improper for the Commission to notice certain parties of the Hearings in this matter. We find no error, as Commission Hearings are open to the public in accordance with § 42-3-170. Defendants are clearly a party to the underlying claim.
26. Counsel implies that the single Commissioner somehow acted improperly by consulting with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities. First, we hold that the record is devoid of any evidence that the single Commissioner did so in this instance. Second, we hold that, had the single Commissioner consulted with court personnel to aid the Commissioner in carrying out his adjudicative responsibilities, such action would have been wholly proper, as it is expressly permitted by the Code of Judicial Conduct. See Canon(3)(B)(7)(c), CJC, Rule 501 SCACR.
27. Counsel asserts that the single Commissioner did not handle his fee petition in a timely manner consistent with Reg. 67-1204(F) by not "immediately" scheduling a hearing. The single Commissioner found that the Form 61 did not comply with Reg. 67-1205 on January 9th, 2018. The Hearing Notice was issued eight days later on January 17th, 2018, the Hearing was held on February 12th, 2018, and the decision of the single Commissioner was issued on March 6th, 2018. We do not see how the single Commissioner could have disposed of the matter in a timelier manner, and hold that the single Commissioner fully and timely complied with the provisions of Reg. 67-1204(F).
28. We hold that Counsel has received adequate remuneration for his services in this case. Counsel was retained in April of 2014 and the award became final in November of 2017. On September 12th, 2016, he received \$9,866.88, and this Decision and Order awards him an additional \$59,632.69, for a total of \$69,499.57.

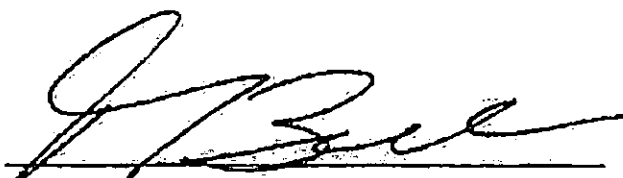
29. In Counsel's correspondence, briefs, and oral statements, Counsel repeatedly refers to the single Commissioner as a "lay commissioner." We find as a fact and rule as a matter of law that the Honorable H. Gene McCaskill is a Workers' Compensation Commissioner appointed and qualified in accordance with § 42-3-20. The Honorable H. Gene McCaskill has been appointed as a Workers' Compensation Commissioner on three occasions by two different Governors, and has been approved unanimously by the Senate on all three occasions. The Honorable H. Gene McCaskill is fully and lawfully qualified, competent, and capable of serving as a Workers' Compensation Commissioner.

ORDER

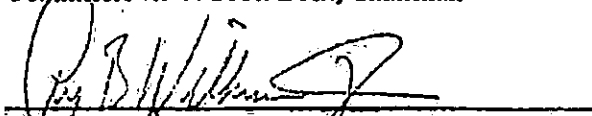
IT IS ORDERED that Counsel's request for attorneys' fees above and beyond \$59,632.69 is DENIED.

IT IS ORDERED that Counsel shall certify in writing to the Commission that he has paid \$13,461.76 to Claimant within thirty (30) days of the date of this Order.

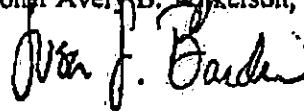
IT IS SO ORDERED!



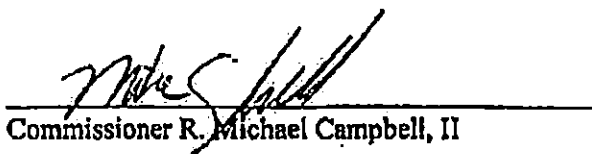
Commissioner T. Scott Beck, Chairman



Commissioner Avery B. Winkerson, Jr.



Commissioner Susan S. Barden



Commissioner R. Michael Campbell, II

CONCURRING IN PART AND DISSENTING IN PART

We concur in part with the majority opinion and would affirm the Single Commissioner's finding that Claimant's award of benefits could not be determined with finality until the date of the Full Commission's Decision and Order on October 17, 2017, when the award became the law of the case. We respectfully dissent from the majority opinion and would reverse the Order of the Single Commissioner in this case on the issue of whether the attorney fees at issue are calculated from the date that the appeal time ran on the Full Commission Decision and Order and the commuted value of the remaining benefits were paid in a lump sum. We find that the attorney's fees in this particular matter are instead calculated from the date of the final order of the

Commission, which is the Full Commission Decision and Order dated October 17, 2017. We base our opinion on the following analysis below.

Supporting case law holds that, essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member. *Smith v. NCCI, Inc.*, 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006); *Curtel v. Environmental Management Services*, 376 S.C. 23, 655 S.E.2d. 482 (2007). Accordingly, the date of maximum medical improvement signals the end of entitlement to temporary total benefits. Maximum medical improvement terminating right to temporary total disability benefits is a factual determination by the Workers Compensation Commission. *Id.*

In this case, MMI was a controverted issue and the Single Commissioner's determination of MMI on October 17, 2016 signaled the end of Claimant's temporary benefits. While Claimant continued to receive weekly total disability benefits after the date maximum medical improvement as determined by the Single Commissioner. Claimant's determination of total and permanent disability was not awarded until October 17, 2017, the date of the Full Commission Decision and Order.

Counsel's argument that the date for the calculation of his attorney's fee award should be the date of maximum medical improvement, October 12, 2016, fails. In this case, Counsel had previously secured additional payment of temporary compensation for his client on a Form 15. Regulation 67-1205(c)(2) states, "If the attorney secures the payment of permanent disability later, the attorney may charge...up to but not more than 33.3% of the settlement or award."

The definition of award is set forth in Black's Law Dictionary. An award is "[a] final judgment or decision." The Full Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989); *see also Hoxit v. Michelin Tire Corp.*, 304 S.C. 461, 405 S.E.2d 407 (1991).

S.C. Code Ann. Section 42-17-50 provides for an "application for review" of a single commissioner's decision. Pursuant to the statute governing review, the Full Commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and if proper, amend the award. *Id.* The Full

Commission shall weigh the evidence as presented at the initial hearing and, if good grounds are shown, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *Pack v. State Dept. Of Transp.*, 381 S.C. 526, 673 S.E.2d 461 (Ct. App. 2009). Although it is logical for the Full Commission to give weight to the Single Commissioner's opinion, the Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (1992); see also *Brayboy v. Clark Heating Co.*, 306 S.C. 56, 409 S.E.2d 767 (1991) (Full Commission may review an award of a single commissioner and make its own findings of fact and conclusions of law).

We find Counsel is entitled to attorney's fees as of October 17, 2017, the date of the Full Commission Decision and Order and is not subject to the 30 day appeal period. S.C. Code Ann. Section 42-17-60 states, "an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award ..., may appeal from the decision of the commission to the court of appeals." Section 42-17-50 goes on to state, "In case of an appeal from the decision of the commission on questions of law, the appeal does not act as a supersedeas and, after that time, the employer is required to make weekly payments of compensation..." The thirty-day supersedeas provision of this section should be construed as requiring weekly payments provided for in the award of the Commission to continue pending determination of the employer's appeal. *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 115 S.E.2d 57 (1960). The legislature intended that weekly payments ordered in an award are to be made until the question at issue is fully determined upon appeal. *Bagwell v. Ernest Burrell, Inc.*, 227 S.C. 168, 87 S.E.2d 583 (1955).

In the present case, there was no appeal from the Decision and Order of the Commission granting Claimant permanent and total disability benefits. As such, the issue of whether or not there was a thirty (30) day supersedeas pending outcome of an appeal is moot. As there was no appeal from the Full Commission Decision and Order, the Findings of Fact and Conclusions of Law of the Full Commission were final and "fully determined" as of the date of the Full Commission Order on October 17, 2017. An award of the Commission is not effectuated until the final Decision and Order of the Full Commission is entered. In this particular matter, Counsel's attorney's fees should be calculated as of the date of the Commission's final Order.

"Every state has some type of provision for subjecting the claimants' attorneys' fees to the supervision of a commission or court handling compensation administration." Lex K. Larson, *Larson's Workers' Compensation* § 133.01(1) (Matthew Bender, Rev. Ed.) Attorney's fees in South Carolina are "subject to the approval of the Commission." S.C. Code Section 42-15-90. The South Carolina Legislature has directed the Commission to supervise both medical payments and attorney's fees. In addition, the Workers' Compensation Commission has promulgated Regs. 67-1204 and 1205 in governing supervision of attorney's fees.

Regulation 67-1205(c) is applicable to this case and states an attorney may charge up to 33.3% of the total amount of compensation. As noted in the majority opinion, the definition of compensation includes the word "payable". The majority interprets this definition to limit the term "compensation" to only those payments that have not yet been paid. This interpretation strictly narrows the definition and practical application as to what compensation is. We find the term "payable" in the definition of compensation is broad and applies to any and all payments that were "payable" at their inception, even if at the time of the award some had already been paid.

We also look to case law governing statutory construction to define the term compensation as defined in S.C. Code Ann. Section 42-1-100. Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). Should compensation only be that payable in the future, it would change the characterization of payments of compensation that have already been paid, essentially creating a third class of compensation payments. There would be temporary compensation, permanent compensation previously paid, and permanent compensation to be paid in the future. There is no statutory or case law authority for such a designation. An example of a statute that could not be reconciled under the majority's interpretation is found in Section 42-9-10. This section provides that in no case may the period covered by the compensation exceed five hundred (500) hundred weeks (with exception). If compensation payments are only compensation when they are payable in the future, then the period of compensation under this statute would be indefinite. In addition WCC Forms 18 and 19 designate and report permanent compensation paid, not compensation payable in the future.

As noted above, the statutes governing review of a Single Commissioner's decision places the Full Commission in the same posture as the Single Commissioner for purposes of the review. The Full Commission is the ultimate fact finder. As such, any finding as to whether the Single

Commissioner abused his discretion would not be the applicable standard for the Full Commission, but rather the Court of Appeals or a higher court. *See Kiriakides v. School Dist. of Greenville County*, 382 S.C. 8, 675 S.E.2d 439 (2009). As the ultimate finders of fact, the Full Commission must analyze the application of the traditional factors of review of an attorney's fee award.

The factors that should be reviewed in determining a reasonable attorney's fee in any matter are: (1) The nature, extent, and difficulty of the case; (2) The time necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results obtained; and (6) the customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991).

With regard to the first *Glasscock* factor, the nature, extent and difficulty of the case, this case involved the pursuit and obtainment of a finding of "permanent and total disability." This is the maximum benefit that can be obtained in a workers' compensation matter, except for matters involving catastrophic injuries such as severe brain damage. In addition, the contested issues included whether Claimant was at maximum medical improvement and whether she was entitled to lifetime medical treatment despite competing medical opinions. Although the Record does not indicate the presentation of any novel issues, the parties' APA Submissions totaled 249 pages in addition to the deposition transcripts of Dr. Lembo and Dr. Healy.

As to the second *Glasscock* factor regarding time, Workers' Compensation attorneys are traditionally engaged with contingency contracts that are subject to Commission approval, so the factor of the number of hours expended by an attorney is not usually directly considered by the Commission. However, it may be relevant in the aspect of considering the complexity of a matter. Counsel cites in his Form 61A that he has hundreds of hours in this case. It is unknown how many hours may have been performed by Counsel for the increase in temporary compensation. It is noted that Counsel previously obtained a tangible result for the Claimant in increasing her compensation rate; a fee has already been approved by order of the Commission for that pursuit. It was calculated from the back payment of the increase in award. As indicated herein, future payments of temporary total are not subject to an award of attorney's fees by custom which is codified in Regulation 67-1205.

As to professional standing and experience of counsel, the third *Glasscock* factor, Counsel (McDaniel) regularly appears before the Workers' Compensation Commission exclusively

representing injured workers. His Form 61A filed with the Commission indicates that he has been practicing for over 41 years.

This matter involves that of a contingency contract as outlined in *Glasscock* factor number four. This is the method of payment customarily and traditionally before the Commission.

The determining factors in this matter involve what beneficial results were obtained and what is the customary legal fees/calculation applied by the Commission, which are the fifth and sixth *Glasscock* factors. The benefit obtained in this matter was not secured until the final award of the Commission. The award of attorney's fees is customarily calculated from the amounts that are secured by counsel in a case pursuant to an award. In most circumstances, including the facts of this underlying claim, amounts from a running award of weekly payments are not customarily subject to attorney's fees, as they are automated. The pivotal issue in the workers compensation award of attorney fees is what is customary. No matter what the characterization of the compensation is, temporary or permanent, the fees are granted to the amount of the award that is obtained by the efforts of the attorney. Attorney's fees are not traditionally granted to an amount based on a running award under the facts of this case. The Regulations cite specific situations in which the Commission notes that fees are not payable on a running award. For example, an award of attorney's fees are not made on continuing temporary total benefits or where a Claimant's attorney has defeated the termination of a running award. In this case, a fee was allowed on back temporary total disability benefits as the Claimant's attorney successfully obtained a beneficial increase; but, although the attorney obtained the increased, running award for the Claimant, he is not entitled to a fee of the continuing temporary compensation. This particular custom is cited within Regulation 67-1205(c)(2), itself. Again, R. 67-1205(c)(2) allows a fee of 33.3% of a later award or settlement. In this case, the benefit was not obtained until Counsel effectuated and secured the final award as stated above.

We find that due to the factors reviewed that the award of attorney's fees in this matter should be calculated as 33.3% of the amount awarded to Claimant as of the date of the final award of the Commission, which is the Full Commission Decision and Order dated October 17, 2017. For the reasons as set forth above, we would affirm in part and reverse in part the Order of the Single Commissioner.



Commissioner Melody L. James



Commissioner Aisha Taylor

Order Served via USPS:

Preston F. McDaniel McDaniel Law Firm 1315 Elmwood Ave Columbia, SC 29201	Pamela O. Cartee 1825 Woodbine Drive Hartsville, SC 29550
John M. Milling Attorney at Law P.O. Box 519 Darlington, SC 29532	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 6, 2022

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1307922

PAMELA CARTEE

Claimant,

v.

S.C. JUDICIAL DEPARTMENT

Employer, and

STATE ACCIDENT FUND

Carrier,

Defendants.

MOTION ORDER

This matter came before the Commission on September 19, 2022 on Counsel/ Appellant's Motion for Rehearing. For the reasons stated herein, the Motion is denied.

FINDINGS OF FACT

1. This matter arose out of a claim for an alleged repetitive trauma injury to the bilateral hands, injury to the cervical spine, and psychological overlay caused by Ms. Cartee's employment as a court reporter for the South Carolina Judicial Department.
2. On April 13, 2017, the Single Commissioner found that Ms. Cartee reached maximum medical improvement on October 12, 2016 and awarded permanent and total disability benefits payable in a lump sum and lifetime, causally related medical treatment.
3. Both parties appealed the decision to the Appellate Panel, which ultimately affirmed the Single Commissioner's benefits award on October 17, 2017.
4. During the pendency of the appeal, Defendants continued to make weekly compensation payments to Claimant pursuant to the Act until approximately December 11, 2017 when they submitted a Form 19 indicating that payment, representing the commuted value of the remaining 500 weeks of Claimant's April 13, 2017 award, had been made in the lump sum amount of \$179,077.14.

5. Thereafter, Claimant's Counsel filed the attorney fee petition that is the subject of this litigation. The petition listed the total amount of compensation paid to Claimant including sums paid as weekly payments during the pendency of the parties cross-appeal on the merits (\$339,711.44) and sought approval of an attorney's fee in the amount of \$73,094.45 .
6. The Single Commissioner approved a fee of \$59,632.69, the maximum 33.3% of the remaining lump sum (\$179,077.14) paid to Claimant upon the expiration of the appellate panel appeal period. The remainder of Counsel's requested fee was denied.
7. The question before the Appellate Panel was whether the Act and Regulations allow the Commission to award an attorney's fee on sums previously paid to a claimant on a weekly basis prior to the date an award becomes final. A majority of the Panel affirmed the Single Commissioner in full, noting that the Full Commission Order became final (or "secure") after the 30-day appeal period expired. Counsel would only be entitled to a fee once the Order became final and Claimant's compensation was secured.
8. However, two members dissented in part, concluding that Counsel would be entitled to a fee on October 17, 2017, the date the Appellate Panel issued its Decision and Order.
9. Counsel timely filed the instant petition for rehearing alleging that they are entitled to a fee on all compensation paid, including sums paid to Ms. Cartee weekly during the pendency of the Appellate Panel Appeal because Counsel "secured" payment of compensation on April 13, 2017, the date of the Single Commissioner's Decision and Order on the merits.

CONCLUSIONS OF LAW

1. Regulation 67-215B authorizes the Commission to "entertain motions to *reconsider* an order, opinion, or award, if the purpose of the motion is not an attempt to reargue the merits of the dispute." S.C. Code Regs. 67-215B (2022). Claimant's pleading is entitled "Motion for *Rehearing*." The South Carolina Administrative Procedures Act contemplates the filing of "petitions for rehearing" and has been interpreted by the Courts as providing the right to file a motion for rehearing with the Appellate Panel. S.C. Code Ann. § 1-23-380(1)(2008, as amended); Rhame v. Charleston County School District, 412 S.C. 273 (2015). Commission regulations authorize it to entertain "motions to reconsider." See S.C. Code Regs. 67-215B (2018, as amended). While there is no explanation for the use of the two different terms, the legal standards for review are similar. See S.C. Code Regs. 67-215B (2018, as amended) ("A

Single Commissioner or the Full Commission may entertain motions to reconsider. . . if the purpose of the motion is not an attempt to reargue the merits. . .") and Rule 221, SCAR ("A petition for rehearing shall. . . state with particularity the points supposed to have been overlooked or misapprehended by the Court."); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 532 (2001) (" . . . nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time."). Therefore, the Commission considers Counsel's Motion for Rehearing as authorized by S.C. Code Regs. 67-215B (2022).

2. The Commission fully and contemplatively considered Counsel's Motion for Rehearing and it is, hereby, denied. The Appellate Panel did not overlook or misapprehend any points in making its decision. Therefore, the Commission is bound by its current laws and regulation as written. "Attorney fees. . . for services under this title are subject to the approval of the Commission," S.C. Code Ann. § 42-15-90 (2012, as amended). S.C. Code Regs. 67-1205(C) permits a maximum attorney fee of 33.3% of the "total amount of compensation." S.C. Code Regs. 67-1205 (C)(2022). "Compensation" is defined as "the money allowance payable to an employee," S.C. Code Ann. § 42-1-100 (1962). "If the attorney secures the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the "settlement or award." S.C. Code Regs. 67-1205(C)(2)(2022). There is no dispute that through her Counsel's able efforts, Claimant was awarded a total of \$339,711.44 as monetary compensation during the pendency of her claim. Counsel urges the Commission to adopt an interpretation of Regulation 67-1205(C) that allows the Commission to calculate an attorney's fee based upon the total amount of benefits paid after a finding of maximum medical improvement rather than calculating the fee based upon the settlement or award ultimately secured as specifically stated in the statute. We decline to adopt this interpretation.
3. Our regulations require that an attorney "secure" compensation for a client prior to taking a fee on the settlement or award. The Merriam-Webster Dictionary defines "secure" as "to put beyond hazard of losing or of not receiving; guarantee.[sic]"¹ The Workers' Compensation Act provides the appellate procedure for parties seeking review of Commission awards. See S.C. Code Ann. § 42-17-50 (1981, as amended) (providing for an application for review to the

¹ Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/secure> (last accessed October 7, 2022).

Appellate Panel within 14 days after notice of the award) and S.C. Code Ann. § 42-17-60 (2007, as amended) (The Appellate Panel's award is conclusive and binding as to all questions of fact but is not conclusive and binding as to questions of law until the expiration of the 30-day judicial appeal period). In this case, neither party ultimately sought judicial review of the Appellate Panel's Order for questions of law or questions of fact. Holding that the Commission's award was final on both questions prior to the expiration of the appeal period obscures the legislature's intent to provide for a full 30 days to file an appeal. Case v. Hermitage Mills is unhelpful to this analysis. Case interpreted a prior version of Section 42-17-60 that included a 30-day supersedes. Defendants' paid benefits while the claim was on appeal. There was no supersedes issue. See generally Case v. Hermitage Cotton Mills, 236 S.C. 515 (1960).

4. Permitting an attorney to collect a fee on benefits previously received by a claimant is inconsistent with the purpose of the Workers' Compensation Act, and contrary to the legislature's intent. See Cokeley v. Robert Lee, Inc., 197 S.C. 157 (1941) ("Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents to relieve them of the uncertainties of a trial in a suit for damages. . . such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results."); S.C. Code Regs. 67-1205C(5) (requiring an attorney to calculate the fee on the lump sum payable to the client *after* the award or settlement is commuted to present value);
5. Furthermore, awarding Counsels' requested fee is contrary to the requirements set forth in S.C. Code Regs. 67-1205 B because it conflicts with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee. Regulation 67-1205B deems a contingent fee reasonable if the fee is calculated according to subsection C, the attorney fully explains the fee agreement and informs the client of the net recovery, the client signs the Form 61 fee petition, and the fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee. S.C. Code Regs. 67-1205B (2022). SCRPC Rule 1.5(a) and Glasscock v. Glasscock require that the "fee customarily charged in the locality for similar legal services" and the "customary legal fees for similar services" be considered when

assessing the reasonableness of a requested attorney's fee. Approving an attorney fee to be paid from benefits previously received by a claimant would not be a fee customarily charged in the locality for similar services. It is contrary to established law, inconsistent with the purpose of the Act, and incompatible with legislative intent. Though Counsel referenced prior cases in which a fee has been awarded under certain circumstances, the record is bereft of any evidence indicating that a fee had been customarily awarded in similar circumstances. See Glasscock v. Glasscock, 304 S.C. 158, 161 (1991).

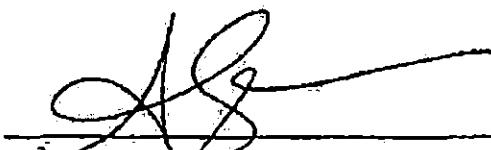
6. The Single Commissioner and the Appellate Panel faithfully applied the plain meaning of the Act and Regulations to the facts of this case and, in their discretion, awarded a reasonable and appropriate attorneys' fee.

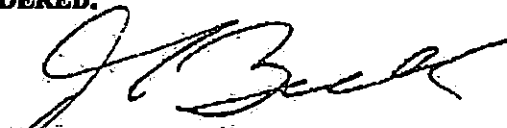
IT IS ORDERED that Counsel's Petition for Rehearing is denied. This is the final Decision of the Commission on this claim. The parties retain all appellate rights pursuant to S.C. Code Ann. § 42-17-60.

IT IS SO ORDERED.

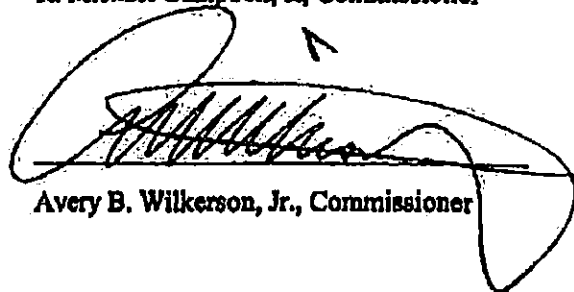
(date) Columbia, SC


Melody L. James, Commissioner


Aisha Taylor, Commissioner


T. Scott Beck, Chairman


R. Michael Campbell, II, Commissioner


Avery B. Wilkerson, Jr., Commissioner

Order Served via email:

Preston F. McDaniel McDaniel Law Firm preston@pfmcdlaw.com	John M. Milling Attorney at Law johnmilling@bellsouth.net
--	--

Order Served via USPS:

Preston F. McDaniel McDaniel Law Firm 1315 Elmwood Ave Columbia, SC 29201 Pamela Cartee Hartsville, SC 29550	John M. Milling Attorney at Law P.O. Box 519 Darlington, SC 29532
---	--

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on January 4, 2023

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1307922
Carrier File # 2013-001614
Carrier Code # 500 - SF
Employer FEIN [REDACTED]

Pamela Carter [REDACTED]

JUDICIAL DEPARTMENT
1015 Sumter Street, Columbia, SC 29201

(843) 339-4003 (home) () - (work)

Preparer's name: Meggan Damiano (803) 898-5893 State Accident Fund, Insurance Carrier

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	230.0000	* Details on Page 2 *		180,634.30
2. Number of weeks T.P.				
3. Number of weeks P.P.		WCC Ordered - P&T 500 weeks commuted		179,077.14
4. Disfigurement				
5. Agreement and Final Release				
Total Compensation Paid				339,711.44
6. Total Medical Benefits* Paid				52,484.06
7. Funeral Benefits				.00

() Case Denied

Date of Injury: 03/01/2013

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: Pamela O Carter
Claimant

By: Brandyce Apple
Employer's Representative

Date: 12/11/17

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

- A. Carrier Reimbursement by Third Party
B. Attorney's Fee Paid by Employer
C. Attorney's Fee Paid by Claimant
(Non contingent fees, only)

\$.00
\$
\$

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.

WCC FORM # 19 REV. DATE 3/98 19

STATUS REPORT AND COMPENSATION RECEIPT

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1307922
Carrier File # 2013-001614
Carrier Code # 500 - SF
Employer FEIN [REDACTED]

Pamela Cartee [REDACTED]
[REDACTED]

JUDICIAL DEPARTMENT
1015 Sumter Street, Columbia, SC 29201

Preparer's name: Meggan Damiano (803) 896-5893

State Accident Fund, Insurance Carrier

TT	2.8571	02-JUL-13	21-JUL-13	1,995.45
TT	227.1428	26-JUL-13	01-DEC-17	158,838.84

0079 03
4 21 21
0.034

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 20, 2018

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: . Preston F. McDaniel and John M. Milling Re: Attorneys
Fee Order in Re: Pamela O. Cartee v. SC Judicial Department
WCC File No.: 1307922

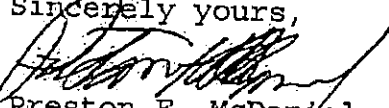
Dear Ms. Bracy:

Please find enclosed for filing with the Commission the Form 30 - Request for Commission Review in the above referenced matter in reference to the March 6, 2018 order concerning attorneys fees, along with the required \$150.00 filing fee. I am, by copy of this letter, serving counsel for the Defendants (a Non-party) with a copy of the Form 30, Redacted to comply with Commission Regulation.

I hope this is sufficient for filing with the Commission, however, if additional information or further clarification is needed, please feel free to contact me at your convenience.

Please note I have not received a response from General Counsel for the Commission concerning the statutory authority for a Commission Review or as to the ethical and legal implications concerning this situation and would request that this Request for Review be held until a response is filed or Counsel is advised in writing no response will be forthcoming or for a period of thirty (30) days whichever comes first.

Sincerely yours,


Preston F. McDaniel

SCWCC

MAR 22 2018

JUDICIAL

PFM/smk
Enclosures

cc: John Milling, Esquire
Sarah Alphin, Attorney at Law (Ltr. to 30014) .
Ms. Pamela O. Cartee

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

PRESTON F. MCDANIEL AND
JOHN M. MILLING,
Attorneys at Law

v.

South Carolina Workers
Compensation Commission
Commissioner McCaskill Order
Concerning Attorneys Fees

IN RE:

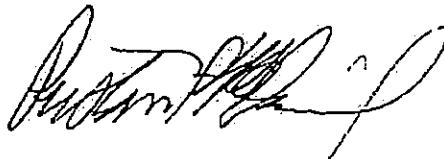
PAMELA CARTEE, Employee,
Claimant,

v.

SC JUDICIAL DEPARTMENT,
Employer, and
STATE ACCIDENT FUND,
Insurance Carrier,
Defendants.

REQUEST FOR COMMISSION
REVIEW OF THE
MARCH 6, 2018 ORDER
REFUSING TO APPROVE
ATTORNEYS FEES

Attached hereto and incorporated herein by reference is the
Commission Form Requesting Commission Review



South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1307922
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

IN RE:

Claimant's Name: Pamela O. Cartee SSN: 242 - 92 - 6400 Employer's Name: SC Judicial Department
Address: 1825 Woodbine Drive Address: 1015 Sumter Street
City: Hartsville State: SC Zip: 29550 City: Columbia State: SC Zip: 29201
Home Phone: () - Work Phone: () - Insurance Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 03/01/2013

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Although not provided for by Statute or Regulation the Claimant's attorneys are requesting Commission Review of the Order of Commissioner McCaskill issued on March 6, 2018 refusing to approve a portion of

The fee requested December 5, 2017

Grounds for Review are Attached

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to **SEE ATTACHED CERTIFICATE OF SERVICE** on the ___ day of 2018, by ___ first class postage ___ certified mail ___ personal service.

Preparer's Signature: [Signature] Attorney for Claimant: [Signature] Email: preston@pfmcdlaw.com Date: March 20, 2018
Title: _____

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

ATTACHMENT TO FORM 30

Pamela O. Cartee v. SC Judicial Department

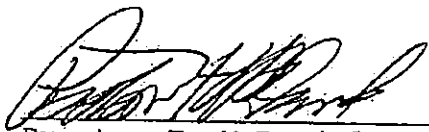
W.C.C. File No. 1307922

1. That pursuant to S.C. Code of Laws §42-17-40, the attorneys a Claimants request a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and/or in any communications concerning the claim (fee request), Order, Award and Decision between December 5, 2017 and March 6, 2018 with or between the Commission rendered by the Hearing Commissioner in this matter.
2. That the hearing Commissioner erred by refusing to approve the fee as requested on December 5, 2017, which fee request is in accordance with Statute, Regulation and Case Law.
3. The Commissioner erred as a matter of law by denying a portion of the fee in violation of Statutory authority granted to the Commission under 42-15-90 and Regulations 67-1203 thru 1207.
4. Where the Statute provides that if a Commissioner reviewing a fee request has any question or concerns concerning the fee requested in any regard, The Commissioner is required (shall) to, "immediately schedule" a hearing to hear argument and/or present testimony, is the hearing Commissioner estopped from and/or has he waived challenging the fee where a hearing was not immediately scheduled and where a hearing was not set until requested by counsel and then was set on January 17th for February 12th, and a portion of the fees requested was not finally denied until over 3 months post when the fee request was submitted.
5. Where the hearing Commissioner does not immediately question a part of the fee and return an Amended Order which would allow a Motion to be filed with the Commission pursuant to Regulation 67-1204(E) to challenge the amendment to the fee as requested, is the Commissioner in derogation of the Law and is the Commissioner and

Commission estopped from further challenging the fee for non-compliance with statute and regulation.

6. Are the Regulations adopted by the Commission that being Regulations 67-1203 thru 1207 null and void as being in violation of the requirements of South Carolina Code §42-3-185.
7. Where the Fee request filed on December 5, 2017, was in accordance with South Carolina Code §42-15-90; and Commission Regulation 67-1205(C) which provides for a 33.3% fee based on the total of compensation paid and also under §67-1205(C) (2) which provides that, "if the attorney secures the payment of permanent disability later, the attorney may charge, according to these Regulations, up to but not more than 33.3% of the settlement or Award"; and where under South Carolina case law presented to the hearing Commissioner holding that the permanent Award is determined based on the date that the Commission determines maximum medical improvement at which time weekly compensation benefits payable thereafter constitute payments towards the Award and not temporary total disability benefits, [See for example as presented to the hearing Commissioner *Hendricks v. Pickens County* 335 S.C. 405, 517 SE 2nd 698 (1999)], did the Hearing Commissioner err as a matter of law by not Awarding the Attorneys fees as requested; violate state, tortuously interfere with contract commit malfeasance in office, fail to perform a ministerial act contrary to law and fact. Further did the action and order constitute an arbitrary, capricious act, and an abuse of discretion under law.

Respectfully submitted,


Preston F. McDaniel, Esquire
Attorney for the Claimant
And

March 20, 2018

CERTIFICATE OF SERVICE

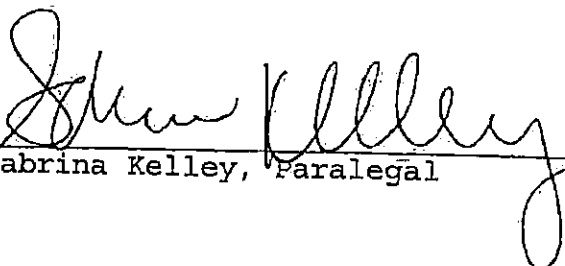
WCC File No.: 1307922

I hereby certify that I have on March 20, 2018 served the following in the matter of Pamela O. Cartee v. SC Judicial Department with a copy of the FORM 30 - REQUEST FOR COMMISSION REVIEW by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director
SC Worker's Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Sarah Alphin, Attorney at Law
Willson Jones Carter & Baxley
3600 Forest Drive, Suite 204
Columbia, South Carolina 29204

Pamela Cartee
1825 Woodbine Drive
Hartsville, SC 29550


Sabrina Kelley, Paralegal

SWORN TO BEFORE ME this
20th day of March, 2018.

Cystal R. Lupton (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/30/26

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
)

PRESTON F. MCDANIEL, ESQUIRE,
AND
JOHN MILLING, ESQUIRE
Plaintiff,

v.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
Defendant.

C/A N
18CP160334

IN RE:

South Carolina Workers
Compensation Commission
WEC File No.:1307922

SUMMONS

PAMELA CARTEE,

Employee-Claimant,

v.

SOUTH CAROLINA JUDICIAL DEPT.,

Employer, and

STATE ACCIDENT FUND,

As Carrier,

Defendants

FILED
2018 APR 17 AM 9:45
SCOTT B. SUGGS
CLERK OF COURT/R.D.
DARLINGTON COUNTY, S.C.

TO: THE DEFENDANT ABOVE NAMED: South Carolina Workers'
Compensation Commission, 1333 Main Street, Ste 300, Columbia, SC
29202.

YOU ARE HEREBY SUMMONED and required to answer the
Complaint in this action, a copy of which is herewith served
upon you, and to serve a copy of your Answer to the Complaint on

the Plaintiff, Preston F. McDaniel, at his office, McDaniel Law Firm, 1315 Elmwood Avenue, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted,


Preston F. McDaniel
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
And
John M. Milling
MILLING LAW OFFICE
88 Public Square
Darlington, SC 29532
(843) 393-4083
Plaintiffs

April 12, 2018

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTH JUDICIAL CIRCUIT
)

PRESTON F. McDANIEL, ESQUIRE
AND
JOHN MILLING, ESQUIRE,

Plaintiffs,

v.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION,

Defendant.

C/A No.

18CP160334

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1307922

COMPLAINT

PAMELA CARTEE,

Employee-Claimant,

v.

SOUTH CAROLINA JUDICIAL DEPT.,

Employer, and

STATE ACCIDENT FUND,

As Carrier,

Defendants.

2018 APR 17 AM 10:55
SCOTT B. SUGGS
CLERK OF COURT, D.D.
DARLINGTON COUNTY, S.C.

FILED

The Plaintiffs, Preston F. McDaniel, Esquire and John Milling, Esquire, would respectfully show unto the Court as follows:

I. INTRODUCTION

1. That this action is filed by the Plaintiffs under the South Carolina Declaratory Judgment Statute, S.C. Code §15-53-10, 20, 30, et seq. praying for a declaration of their rights under the provisions of S.C. Code §42-15-90 and the Commission Regulations adopted, arguendo, in accordance with S.C. Code §42-3-185 and under the cases decided by the South Carolina Supreme Court in reference to the date upon which an award of the Commission is permanent as to their entitlement under the Statutes, Regulations and decisions of South Carolina Appellate Courts to the entire fee as requested and submitted to the Commission for approval on December 5, 2017 as being in accordance with law; and declaring that the Order which was not rendered by the Commission until March 8, 2018, wherein the fee petition was only partially awarded, is contrary to the provisions of the Statutes, Regulations, case law and the requirements thereof.

II. PARTIES

2. That the Plaintiff, Preston F. McDaniel, is a resident of Richland County and the Plaintiff, John M. Milling is a residence of Darlington County.

3. The South Carolina Workers Compensation Commission is an agency of the State of South Carolina and is responsible for administering the South Carolina Workers Compensation Act with its main office being in Columbia, SC and which has statewide jurisdiction for the administration of all claims under the South Carolina Workers Compensation Act, S.C. Code §42-1-10 et. seq. including Darlington County wherein and from which county the matter of *Pamela Cartee v. The South Carolina Judicial Department* and the South Carolina State Accident Fund arose and was filed as WCC File No 1307922.

III. JURISDICTION AND VENUE

4. That this Court has jurisdiction over this declaratory judgment action as the Court of general jurisdiction for the State of South Carolina and specifically under the provisions of the Declaratory Judgment Act under South Carolina Code §15-53-10 et. seq., under which this action is brought. Venue is proper in that the fee and representation contract between Ms. Cartee and Plaintiffs was entered into and the disputed fee and the declaration of rights under the Statutes, Regulations and the controlling authority of the Commission over attorneys' fees arises out of a workers' compensation action arising out of the County of Darlington, that being *Pamela Cartee v. The South*

Carolina Judicial Dept. and The South Carolina State Accident Fund.

IV. DECLARATORY JUDGMENT ACTION LAW AND RELIEF SOUGHT

5. That in the matter of Pamela Cartee, Employee/Claimant v. the South Carolina Judicial Dept., Employer and the State Accident Fund, Carrier, WCC File No. 1307922, Commissioner Gene McCaskill filed an Award on April 17, 2017 finding the Ms. Cartee had reached maximum medical improvement (MMI) on October 12, 2016 and award making a compensation to her as of that date for total and permanent disability entitling her to:

"the payment of continuing weekly compensation benefits in the amount of \$698.41 and continuing until 500-weeks of compensation have been paid."

A copy of the Award is attached hereto and incorporated herein by reference as Exhibit A.

6. That, if contested, as will be set forth in the evidence presented to the Court in support of this Declaratory Judgment Action and relief sought, that the, "Award" was appealed based on a Request for Review filed by the Defendants on April 26, 2017 by the filing of a SC WCC Form 30 and attaching to that Form 30 the alleged issues of law and fact that the defendants wanted considered. Attached hereto and incorporated herein by reference as Exhibit "B".

7. That subsequent thereto the Full Commission issued its Award affirming the decision of Commissioner McCaskill which was

filed on October 17, 2017. A copy of that decision is attached hereto and incorporated herein as Exhibit "C".

8. That subsequent thereto, the decision of the South Carolina Workers Compensation Commission affirming the, "Award" was not appealed and subsequent to the 30-day appeal provision running, the claimant made a request for the payment of the residual value of the, "Award" in a lump sum pursuant to the provisions of South Carolina Workers Compensation Act. Calculation of the residual value of the Award was made by the Defendants and is attached hereto and incorporated herein by reference as Exhibit D.

9. That on December 5, 2017, the Plaintiff, Claimant's counsel pursuant to Statute, Regulations and case law filed a Fee Petition requesting the approval of attorney's fees along with an itemized statement of costs and WCC Form 61, all of which are attached hereto and incorporated herein by reference as Exhibit "E".

10. That subsequent thereto and the Fee Petition having not been "immediately" approved, amended and/or a hearing noticed as required by Regulation, the Plaintiff contacted the Commission continuously between December 8, 2017 and January 9, 2018, via email, letter, and by personal appearance at the Commission (x3) in an effort to determine why the Petition had not been approved as will be set forth in the evidence, if not agreed to in the

responsive pleadings filed by the Commission as the Defendant in this matter.

11. That finally over a month later, on January 9th an email was received from the lay Commissioner noting that the Commissioner was approving a portion of the fees requested but that based on his, "legal opinion" ("I have also reviewed the law I believe applicable") he was not approving a portion of the attorney's fees in the amount of \$13,461.76.

12. That prior to the email of January 9th and subsequent thereto the plaintiffs notified Commissioner McCaskill that the statutes and regulations require that a Commissioner either immediately approve or, "shall immediately" set a hearing on the fee petition [W.C.C. Reg. 67-1204(F)] as submitted to the Commission for approval. In this case, the fee petition was submitted on December 8, 2017 and only after the plaintiffs, after noting to the Commissioner that the Commissioner had not complied with the statute and regulations and that it had been over a month, requested that a hearing be set in this matter.

13. That subsequent thereto on January 17, 2018, a hearing was set for February 12, 2018. Contrary to the Code of Ethics, Statutes and Regulations, counsel for the Employer and Insurance Carrier was served with notice of the hearing who waived appearance as not being involved. At the hearing, documents were put into evidence confirming all of the emails, letters and

attempts made at having a discussion with the Commissioner to determine what, if any, problems there were with the fee petition as submitted. At the hearing, the Commissioner at that point was presented in written form with the statutory authority, the regulations and the case law supporting that the Fee Petition as submitted was in accordance with law to which no objection or contrary position was taken by the Commissioner. However, the Commissioner did not rule and took the matter under advisement.

14. That subsequent thereto, having heard nothing and the decision to not approve the Fee Petition as submitted, according to the understanding of the Plaintiffs being that the hearing Commissioner, a lay Commissioner, without legal training was of the, "legal opinion" that the fees was not in accordance with law under the statute, regulations, and case law, the Plaintiffs asked the Commissioner to open the Record and to place his position on the Record; which the Commissioner refused to do.

15. That subsequent thereto, on March 8th, the plaintiffs received an Order from Commissioner Gene McCaskill, the assigned Commissioner for review and approval of the attorneys' fee petition and the portion of the fee in contest, denying the balance of the Fee Request. Further, upon information and belief, based upon a review of that Order and the basis for a denial of the balance of the fees requested being based on legal opinion/interpretation and knowing the Commissioner is a lay

Commissioner not trained in the law and analysis, the Plaintiffs verifiably believe that these facts establish that the Commissioner without notice to the Plaintiffs may have sought outside legal advice in violation of the Judicial Code of Ethics.

16. That S.C. Code of Law §15-53-20 provides that this Court has the power to declare the rights of the Plaintiffs under their contract and under the statutes applicable to the approval of their fee request as submitted to the South Carolina Workers' Compensation Commission. Under §15-53-30, any person interested or who has a property interest in any written contract or, "whose rights, ... are affected by a statute, ... contract ..., may have determined any question of construction or validity arising under the ..., statute, ... and obtain a declaration of rights, ... thereunder."

17. That normally under law, a fee contract between an attorney and his client is a matter of contract law subject only to the Code of Professional Responsibility, however, in a workers' compensation action, S.C. Code §42-15-90(A), attorneys fees, physician fees and hospital charges for services under this title are subject to the approval of the commission and subsection (B)(1) provides that a person may not receive a fee or consideration for a service rendered pursuant to the title unless the fee, ... is approved by the Commission or a court of competent jurisdiction ...", S.C. Code §42-3-30 provides the

authority of the Commission to promulgate regulations relating to the administration of the workers' compensation laws necessary to implement the provisions of the title but also that those regulations must be, "consistent therewith". Further, S.C. Code §42-3-185 provides specific and special requirements in reference to policies and procedures and regulations established for implementing the provisions of §42-15-90 which specifically provides that any such policies or procedures shall only become effective when such implementation is accomplished by regulations promulgated in accordance with the Administrative Procedures Act and which,

"proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent resolution of the General Assembly."

18. That pursuant to the authority of the Commission to implement regulations, and presumably in accordance with S.C. Code §42-3-185, the Commission has adopted regulations in reference to the approval of attorneys fees. Regulation 67-1204(A) provides that all attorneys shall report and obtain approval of any fee for services in accordance with the regulations in reference to a workers' compensation claim. Subsection (D), provides that the attorney is to file a Form 61 and a proposed order and the order may be signed and returned to the attorney(s) when the calculation of the fee is in accordance

with 67-1205. Under subsection (D), the Commissioner has the option to amend, sign and return the order and the attorney(s), if (s)he disagree(s) with the amended order, may file a motion with the Judicial Department and the motion may be heard according to Rule 67-215 unless the motion requests a hearing to present testimony or evidence.

Most importantly to this declaratory judgment action subsection (F) provides that if the Form 61 and order do not comply with Rule 67-1205, the:

"Commissioner reviewing in the Form 61 and order shall immediately schedule a hearing to consider argument of counsel and testimony, if any."

Further, Regulation 67-1205 provides for a contingency fee in general of 33.3% and provides for determining a reasonable fee in certain situations. Subsection (C)(3), provides that the attorney may request a fee from past due compensation but thereafter during the payment of temporary compensation, the attorney may not charge a fee from such temporary compensation. The Regulation then specifically provides that:

"If the attorney secured the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."

19. That in interpreting when temporary compensation benefits transition to an award of permanent compensation benefits, then Judge Hearn, now Justice Hearn wrote in Hendricks

v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999), and held that, "essentially workers' compensation benefits accrue along a time continuum: TTD (Temporary Total Disability) benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member".

Justice Hearn cited to and for the same proposition the cases of Smith v. South Carolina Department of Mental Health, 329 S.C. 485, 495, 494, S.C.2d 630, 635 (S.C. App. 1997) and O'Bannor v. Westinghouse, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (S.C. App. 1995).

20. That in accordance with the statutes, regulations and case law, the Fee Petition submitted on December 8th, set forth the date that the hearing Commissioner had determined that the Claimant reached maximum medical improvement at which time the award of the Commission became a permanent award and the entitlement to the fee of the attorneys of one-third (1/3) attached and was based on the value of the total and permanent disability "award" made as of that date; which is in accordance with the statute, the regulations of the Commission and the case law as set forth hereinabove. The hearing Commissioner a lay Commissioner, whose decision must be based upon his review as the Judicial Officer hearing the case under Judicial Cannons

applicable to the Commission (§42-3-250) only, unless parties are advised otherwise, over three months after the Fee Petition was submitted, in violation of the statutes and regulations as set forth hereinabove, stated the, "legal" opinion and awarded a fee based only on the value of the award as of the date that it was affirmed by the Full Commission and the Defendants stopped further appeal over two (2) years after the permanent award was made. As argued to the Commissioner in repeated letters and emails and verbally to the Commissioner, under that reasoning which is contrary to statute, regulation and case law, an attorney representing the Claimant, if the Defendants decide to appeal the permanent disability "award" made by the Commission all the way to the Supreme Court and that award is ultimately approved when the Defendants decide to stop appealing, the Claimant's attorney would only be entitled to an award of attorney fees as of that date. This Court may take judicial notice in reviewing this situation that where a case is appealed all the way to the Supreme Court, that that process may take five or six years or more for a final decision to be rendered.

21. That under the South Carolina Workers' Compensation Act, there is actually no statutory provisions specifically addressing the rights of an attorney where the fee is not approved in reference to an appeal or how the matter is to be reviewed. S.C. Code §42-15-90 simply provides that not only may the Commission

approve an attorneys fee request but that any Court of, "competent jurisdiction" may approve an attorneys fee request and this Court is the Court of general jurisdiction. In addition, in reference to whether or not the attorney has a right to appeal a decision made, there is no section of the Act that addresses that. S.C. Code §42-17-50 only provides for an application for review of an "award" by the Commission and provides for review by the Full Commission of that award. In fact, the Regulations in reference to appeals, Rule 67-701, provides that the party appealing is to serve the opposing party under Rule 67-211 and Rule 211 only refers to the service of a Claimant or the Employer's representative. In this case and in any fee dispute over approval by the Commission, the opposing party to the attorney's request is the Commission and the only additional party in interest would be the attorney's client, the injured worker. In this case, the hearing notice was served inappropriately on the Defendants and after request about service of an appeal, the Commission gave no guidance as to whether or not the Defendants were to be served. Plaintiffs would submit their involvement would be and is actually an interference with a contract between the Claimant and the Claimant's attorney(s) and the responsibility of the Commission to review and approve the attorneys Fee Petition. The Defendants are not actually a party to either the contract or the request for approval of attorney

fees or a party to the appeal of the denial of any of the attorneys fees requested. The Workers' Compensation Act being in derogation of the common law is to be strictly construed and there are simply no provisions setting forth or establishing whether or not a fee may be appealed or what action is to be taken other than requesting a legal determination which is being made in this declaratory judgment action. Wherefore, the Court should speak and rule upon the parties to, and what procedures should be followed in reference to contesting the refusal to approve fees as submitted to the Commission for approval.

22. That the decision in this matter is a matter of law for decision by the Courts interpreting the statute, regulations and case law as applied to this factual situation.

WHEREFORE, the Plaintiffs would respectfully request and pray for the following relief:

1. Issuing a Temporary Restraining Order restraining the Workers' Compensation Commission a quasi-judicial body from taking any further action in this matter pending a determination by this Court as to the law applicable to and determining the Plaintiffs' right under the Statutes, Regulations and case law in this situation.

2. Issuing a legal opinion and determination under a review of the statutes, regulations and case law as applied to the final permanent "award" made by the hearing Commissioner in this

matter; declaring that the fee as requested is in accordance with the statutes, regulations and case law applicable to a final permanent "Award" which in this case set forth a date of maximum medical improvement, awarded total and permanent disability and an entitlement to the residual value of compensation benefits for a total and permanent disability award as of that date under a 500-week award.

3. Finding based upon a review of the statutes, regulations and case law that the Commissioner assigned to review the Plaintiffs' Fee Petition committed an error of law and violated the Regulations by failing to immediately approve or set a hearing on the attorney Fee Petition as submitted to the Commission for approval on December 8, 2017.

4. For the costs of this action and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211
And
John M. Milling
MILLING LAW OFFICE
88 Public Square
Darlington, SC 29532
(843) 393-4083
Plaintiffs

4/12, 2018

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

PRESTON F. MCDANIEL AND
JOHN MILLING,
Attorneys at Law

v.

South Carolina Workers
Compensation Commission
Commissioner McCaskill Order
Concerning Attorneys Fees

IN RE:

PAMELA CARTEE, Employee,
Claimant,

v.

SC JUDICIAL DEPARTMENT,

Employer, and

STATE ACCIDENT FUND,

Insurance Carrier,

Defendants.

BRIEF OF APPELLANTS

STATEMENT OF THE CASE

By letter dated December 8th attaching a Form 61, an itemized Disbursement Statement and a Proposed Order, the Appellants filed a standard one-third (1/3) contingency fee agreement and request for approval of attorneys fees with the

Appellants filed a standard one-third (1/3) contingency fee agreement and request for approval of attorneys fees with the Commission which fee request was made in accordance with the contract their Claimant and was, again, for simply a one-third (1/3) contingency fee approval based on the Final Award made by the Commission.

As is set out in the itemized Disbursement Statement attached to the Form 61, Commissioner McCaskill in his Final Award found that Ms. Cartee, who was receiving temporary total disability benefits, had reached maximum medical improvement on October 12, 2016 and filed a Final Award awarding Ms. Cartee as of that date an Award for total and permanent disability and the residual value of compensation under a 500-week award which was filed on April 13, 2017.

The Defendants appealed that Award to the Full Commission and the Full Commission entered its decision affirming the Award October 17, 2017. The Defendants then waited until the 30-day statute had run and then the Claimant made a request for the residual commuted value of the Award to be paid in a lump sum. The Claimant received the permanent Award of the Commission in weekly payments pursuant to the Award of the Commission from October 12, 2016 through late November, 2017 at which time the calculation was made, again under the permanent Award of the

Commission awarding the Claimant total and permanent disability, of the residual value of those payments pursuant to the Act.

The fee was calculated based on the value of the total disability Award made to the Claimant at the time that she reached maximum medical improvement and the time of the commutation which is in accordance with law.

Beginning on December 14th, almost daily through January 9th, the attorneys by texts, emails, phone calls and on three separate occasions, counsel personally went to the Commission to inquire about approval of the attorneys fees with no response from the Commissioner as to any questions or concerns the Commissioner may have.

On January 8th and 9th, the attorneys wrote a detailed explanation of the fee request to try to address of any possible concerns but which had not been communicated to counsel of Record at that time. In that response and in other emails on and prior to that date, counsel had noted to the Commissioner that the Commission Regulations and the statute required "immediate" approval or notification to the attorneys of any problems that exists with a request for approval.

As noted, counsel had personally appeared at the Commission and sought to see the Commissioner to address and/or explain any issues and/or answer any questions and at no time did the Commissioner agree or advise the attorneys of any problems.

Finally on January 9th after a month, the Commissioner in an email notified the attorneys that he had, "reviewed the law I believe to be applicable," and had approved only a portion of the fee requested which was approximately \$14,000.00 less than had been requested.

Counsel both on January 8th and on January 9th and prior to both of those dates but on and after those dates specifically requested a hearing pursuant to Regulation. Again, that hearing was only set at the request of counsel and had not been set and was not set at the direction of the Commissioner as is required by Regulation.

All of the texts messages, emails, telephone calls and attempts at personal appearance to answer any questions the Commissioner have were put in the Record.

Please note this is a matter between the Commission and the attorneys of Record, the attorneys' client and the involvement of any other party is an interference with the relationship between the attorney(s) and his (their) client(s) and is not a party in anyway, shape or form in this action and should not be notified of any proceedings or with a copy of any pleadings.

The Commissioner did not put any position on the Record and did not express any objection to the arguments made by counsel or the case law or reference to statutes or Regulation at the hearing; and refused to do so later. The Commissioner advised

he would take the matter under advisement and after numerous requests for a ruling, it was not until March 6th that a decision was entered and which was then based on the Commissioner's legal interpretation of the Regulations and statutes (a lay Commissioner) on March 6th thus three (3) months after the Fee Petition had been submitted to the Commission for approval.

After the hearing and after the receipt of the Order, this appeal was filed and numerous conversations and communications were had with General Counsel for the Commission as to this situation over who to serve since the Defendants are not a party and as to whether or not they were to be served with no response from the Commission. This appeal follows:

The Fee Petition Submitted Was In Accordance With Contract, Statute, Regulation And Case Law.

Generally, a fee contract agreement is a contract between a client and an attorney and is a matter of contract law. However, S.C. Code §42-17-90 subjects attorneys fees to the approval by the Commission. For purposes of this argument, presumably the Commission's Regulations have been adopted in accordance with law, and under and in accordance with Regulation 67-1205, the Fee Petition in this matter was filed with the Commission on December 8th.

Regulation 67-1205(C) (3) provides that where a Claimant is on a running award of, "temporary," weekly compensation benefits

an attorney thereafter who obtains a permanent "Award" is entitled to a fee of one-third (1/3) of the permanent "settlement or award" made.

The Fee Petition and itemized Disbursement Statement was for exactly that; a one-third (1/3) contingency fee of the Permanent Award made as of the date that that award was made.

In interpreting the time when an "Award" becomes permanent, the South Carolina Court of Appeals and Supreme Court have both held that an award transitions from being an award of, "temporary" compensation benefits to a permanent, "Award" upon the date that the Commission determines that the Claimant has reached maximum medical improvement. Specifically, in the case of, as cited to the Commissioner reviewing the Fee Petition, Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (1999), the Supreme Court stated specifically that:

"TTD benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member ..."

The Fee Petition in this matter was therefore submitted pursuant to contract, pursuant to Statute, pursuant to Regulation and in accordance with case law as to the permanent "Award" made by the hearing Commissioner in this matter.

Further, the statute and regulations contemplate a very prompt determination. The Regulations specifically require that

when a fee petition is submitted, it is to, "immediately" be approved or the Commissioner is to amend it and return it so that the attorney may request a hearing by motion or in the alternative must immediately set a hearing to take arguments and/or to take testimony. Neither of which was done in this case. Over a month and after repeated requests for any possible questions or concerns that the hearing Commissioner and only after a request was made by the Claimant's counsel in this matter was a Hearing scheduled. Therefore, the Commissioner erred as a matter of law by failing to approve the attorneys fees which was submitted in accordance with contract, statute, regulations and case law and further, committed error of law and specifically violated the Regulations by failing to take immediate action upon the Fee Petition as submitted.

The Commissioner further erred as a member of a quasi-judicial body and as a non-lawyer by basing his decision on a legal opinion which was contrary to Regulation and case law.

The hearing Commissioner further erred by only setting a hearing and setting that hearing only after a request was made by the Claimant's counsel.

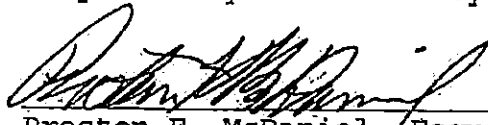
Finally, the matter of an attorney's fees is a matter of contract between the claimant and the attorney subject only to the statutory authority in a Workers' Compensation Commission case given to the Commission and nobody else the right to

interfere with and to approve the attorney fees as requested. The Hearing Commissioner's notification of the Defendants as to the hearing constitutes an interference of contract between the attorney and their client. That error was augmented by the fact that General Counsel for the Commission failed to respond upon inquiry and to advise as to who was appropriately served in this situation with a copy the Request for Commission Review.

CONCLUSION

WHEREFORE, the Fee Petition which was in accordance with the attorneys contract with their client; was in accordance with statute; Regulations and case law and was a standard one-third (1/3) contingency fee based on the Final Award made by the Commission should have been approved:

Respectfully submitted by:



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083
Attorneys for Claimant/Appellants

April 23, 2018

CERTIFICATE OF SERVICE

WCC File No.: 1307922

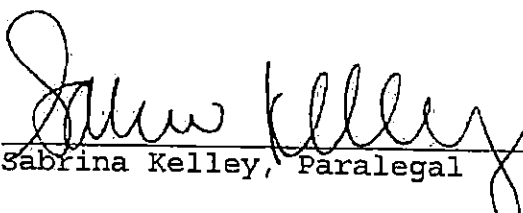
I hereby certify that I have on April 23, 2018 served the following in the matter of Pamela O. Cartee v. SC Judicial Department with a copy of the APPELLANT'S BRIEF TO THE FULL COMMISSION addressed as follows:

VIA ECASE UPLOAD ONLY

Amy Bracy, Judicial Director
SC Worker's Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

VIA US MAIL

Pamela Cartee
1825 Woodbine Drive
Hartsville, South Carolina 29550


Sabrina Kelley, Paralegal

SWORN TO BEFORE ME this
23rd day of April, 2018.



Notary Public for South Carolina (L.S.)

My Commission Expires: 10/28/18

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

**Proudly representing injured workers
for over 30 years.**

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

June 25, 2018

VIA EMAIL - abracy@wcc.sc.gov
AND US MAIL

Ms. Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Pamela Cartee v. SC Judicial Department
WCC File No. 1307922

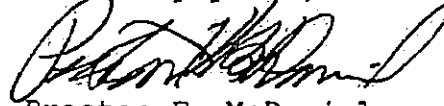
Dear Amy:

Although we have not been properly served pursuant to S.C. Code §42-17-60, we are going ahead and filing a Motion to Rehearing to the Order entered by the Full Commission in the above-referenced matter. You will please take notice that on May 31st, 2018, I previously filed notice of our intent to file a Petition for Rehearing and my request that the Order be redrafted so that it was properly captioned and notice that it had not been properly served on my co-counsel..

Enclosed is the required number of copies pursuant to the Commission Regulations and the required \$25.00 filing fee. Upon proper service of an Amended Order, properly served on the parties to this action involving a request of the approval for attorneys fees, I will be glad to file an Amended Motion for Rehearing.

I am including an Affidavit of Service on Ms. Cartee who is the only other party to the action which as noted by the Full Commission waived appearance and has no objection to the fee as requested being approved by the Commission.

Sincerely yours,



Preston F. McDaniel

PFM/abh
Enclosure

cc: John Milling, Esquire (via email johnmilling@bellsouth.net)
Pamela O. Cartee

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

PRESTON F. MCDANIEL AND
JOHN MILLING,
Attorneys at Law

v.

South Carolina Workers
Compensation Commission
Commissioner McCaskill Order
Concerning Attorneys Fees

IN RE:

PAMELA CARTEE, Employee,
Claimant,

v.

SC JUDICIAL DEPARTMENT,
Employer, and
STATE ACCIDENT FUND,
Insurance Carrier,
Defendants.

MOTION FOR REHEARING
CONCERNING THE
FULL COMMISSION ORDER
NOT PROPERLY SERVED AS
OF THIS DATE PURSUANT
TO §42-17-60

Pursuant to the S.C. Code §1-23-380, SCACR 201 and the
decisions and opinions of the South Carolina Supreme Court and
Court of Appeals, the Petitioners, Attorneys for the Claimant
hereby move for Rehearing before the Full Commission en banc for
the reasons as set forth hereinafter:

1. That it is a fatal defect for an Order to be improperly captioned. In this matter, the Order of the Full Commission is captioned as being an Order in the Matter of: Pamela O. Cartee, Claimant v. South Carolina Judicial Department, Employer and State Accident Fund, Carrier. That is not the case. A review of the Form 30 filed with the Commission will show that this Appeal is in reference to, not a fee dispute, but a Request for Review of the Order denying a portion of the attorneys fees request made by the attorneys. This is not a dispute between the attorneys and the Claimant as noted by the Commission nor are the Defendants in any way involved as parties to the action. The parties to this action are at most, the Commission, the attorneys for the Claimant and the Claimant and this action is an ex parte action by the attorneys, In Re (in the matter of) Ms. Cartee versus the Employer and Carrier. It is elementary pleading practice that the title and caption of an action/pleading are jurisdictional and is a fatal flaw.

2. That according to the vote sheets, four (4) Commissioners voted simply to, "affirm" and two (2) of the Commissioners voted to affirm with amendment. As to the four (4) members that voted to affirm, that is a vote to affirm as written. If the Commissioners deem it appropriate to make any modifications to the hearing Commissioner's Order, the Commission Regulations require that the Commissioners, "shall

agree on a modification, if any, and record their Findings of Fact and Conclusions of Law on a vote sheet." [Reg. 67-709(E)(2)]. Instead of an Order to confirm the decision of the Commissioner which is what the Commission voted to do, an entirely separate Order with separate Findings of Fact and Conclusions of Law was entered which is in derogation of the Commission's Regulations.

3. That the decision of the Full Commission which is in derogation of Commission Regulations states that the Full Commission had reviewed the Record and considered the position of counsel. Assuming that the new separate Order issued by the Full Commission is appropriate, the Commission's own Regulations and Guidelines require that the drafting party is required to set forth the APA Submissions and documentation and transcript that was reviewed by the Commission.

First, the Petitioners repeatedly requested that the Commission confirm that a copy of the transcript of the hearing before Commissioner McCaskill had been made a part of the Record pursuant to S.C. Code §42-17-40. No confirmation has ever been received and no reference to the content of the hearing, including the case law, Regulations and documentation submitted to Commissioner McCaskill is set forth in the Order. The Order needs to be amended to establish that the transcript of the

hearing and the documentation submitted to the Commissioner was made a part of the Record and considered by the Commission.

4. That Finding of Fact No. 1 is appropriate but fails to note that through the efforts of counsel, Claimant's compensation rate was raised by \$184.02/week resulting in an additional award to the Claimant over the 500-week period which was ultimately paid of approximately \$92,010.00. The fact is not noted anywhere in the Record that the attorneys did not request a fee for the entire period of time of the Award. Assuming that the Commission decision is correct only as of the payment of a lump sum, for the period of time from the payment date of back due temporary total, the underpayment from the time of the prior Award on September 12, 2016 through the date of payment of a lump sum on December 1, 2017 would be a figure of over \$15,089.64 thus entitling the attorneys on that basis alone of over \$5,000.00.

5. That Finding of Fact No. 2 fails to note the date of maximum medical improvement which is the date under Supreme Court decisions that the award of temporary weekly benefits transitions to being an Award of part of the permanent disability award made by the Commission.

6. That Finding of Fact No. 3, although not made in Commissioner McCaskill's Order, is in accordance with the Record.

7. That as to Finding of Fact No. 4, the Finding of Fact misstates the Record in that the attorneys fees requested was requested as part of the permanent Award made to the Claimant under the permanent disability Award made to the Claimant for a total and permanent disability in the amount of \$220,283.33. It also misstates that the attorneys fees requested is for 33.3% of the permanency award made to the Claimant. The Finding also contains a calculation that is not part of the Record before the Commission and is also not a Finding of Fact made by Commissioner McCaskill in his original Order.

8. That the Finding of Fact No. 5 is in accordance with the Record but Finding of Fact No. 6 goes outside the Record and makes statements concerning whether or not notice was given by Commission and refers to, "adjudication" instead of, "approval" and makes a statement outside of the Record that the single Commissioner had, "declined to communicate with him about the matter". It fails to note that Commissioners and attorneys regularly communicate concerning fee petitions under consideration concerning any questions the Commissioner may have.

9. That Finding of Fact No. 7 again is not a Finding made in the hearing Commissioner's Order that was affirmed by the Commission, nor does it set out the reason that a hearing was set at that time or the parties that were notified.

10. That while Finding of Fact No. 8 was not made by the hearing Commissioner, it is accurate as to the hearing being held but fails to note what evidence was submitted and the position of the Petitioners nor is there any reference again to the Case Law and/or the date of maximum medical improvement in this Finding.

11. That Finding of Fact No. 9 while not included in the hearing Commissioner's Order, is accurate as to the date of the Interim Order of the hearing Commissioner.

12. That Finding of Fact No. 10 and Finding of Fact No. 11 are not contained within the Commissioner McCaskill's order and as written are inaccurate as to the Record and as written potentially accuse the Petitioners of improper conduct.

13. That as to Finding of Fact No. 12, outside of not being made as part of the hearing Commissioner's decision which was affirmed by the Full Commission, is inaccurate in that there was no change in the amount of the Award from which the attorneys fees were requested. The only purpose of the amended Form 61 was to make is perfectly clear, due to scrivener's errors; that the request for the attorneys fees was based on the permanent Award as of the date of maximum medical improvement at which time under the Supreme Court decisions and statutes the Award became final.

14. That Finding of Fact No. 14 is not contained within the hearing Commissioner's Order and further is inaccurate in that there has never been a request for additional attorneys fees. The request for attorneys fees was and has remained as being from the final Award of the Commission.

15. That as to Finding of Fact No. 14 while not being a part of the Commissioner's Order, it also contains an inaccurate representation of the Facts and in addition misstates the letter in that it is clearly a notification for the Record and there is not, "threat to file litigation". There is also a failure to note that one of the purposes of the letter was to note in the Finding that the Order had not been served on one of the Petitioners, co-counsel in this case, Mr. John Milling.

16. That Finding of Fact No. 15 is not part of Commissioner McCaskill's Order and is further a misstatement of fact and should not be included.

17. That Finding of Fact No. 16 again is not part of Commissioner McCaskill's Order that was affirmed by the Full Commission.

18. That Finding of Fact No. 17 is an accurate statement of the filing of the Form 30.

19. That as to Findings of Fact 18 through 22, they are not part of the original Order affirmed by the Full Commission and are further inaccurate for the following reasons:

A. Petitioners were originally advised that the matter was set for review by a Full Commission Panel but was then set en banc. Upon inquiry, the Petitioners were advised that it was set en banc due to the Commission policy to hear all Attorney Fee issues en banc and that there had been no request for an en banc hearing by Commissioner McCaskill. Subsequently, the Petitioners were advised that Commissioner McCaskill had made a verbal request and further after inquiry for the policy they were advised that the policy of the Commission to hear attorneys fee issues en banc was not a "written" policy of the Commission.

B. As to Finding of Fact No. 19, the Finding as written is inaccurate as to the Record and in no way had Petitioners threatened litigation.

C. Finding of Fact No. 20 is an inappropriate Finding of Fact and misstates the Record.

D. Finding of Fact No. 21 is an inappropriate Finding of Fact, fails to note both co-counsel as Petitioners and has nothing to do with the issues before the Commission on appeal.

E. Finding of Fact No. 22 is not appropriate as to any of the issues on appeal and is a misstatement of the Record and is not factual in that counsel for the Defendant, the Assistant Attorney General assigned, advised the Commission that

the Temporary Restraining Order was allowed to dissolve thus allowing the Full Commission to rule.

20. That Conclusion of Law No. 1 is an inaccurate statement of the law as attorneys fees are subject to the approval by the Commission or a "court of competent jurisdiction".

21. That Conclusion of Law No. 2 properly notes the applicable Code sections, however it fails to note the date of and citation to the requirement that before any procedures become effective as promulgated under the Administrative Procedures Act in reference to attorneys fees that those Regulations before promulgation under the Administrative Procedures Act must have received approval of the Judiciary Committees of the Senate and House of Representatives and also by Concurrent Resolution of the General Assembly. There is no citation as to the Acts and Joint Resolutions and/or the Record of the Senate and House Journals as to the promulgation under law that those statutory requirements have been met.

22. That Conclusion of Law No. 3 and 4 are accurate in reference to the Code sections and Regulations (whether or not the Regulation has been properly adopted) as set forth in the South Carolina Code of Laws as does Conclusion of Law No. 5 and Conclusion of Law No. 6 to the extent that those apply to an

award of compensation, but to not other representation of a claimant on other issues before the Commission.

23. That Conclusion of Law No. 7 specifically is not contained within the decision of the hearing Commissioner and cites to Case Law inapplicable to a South Carolina workers' compensation case and as to attorneys fees in a workers' compensation action. Also, the footnote under Conclusion of Law No. 7 is not referred to by the hearing Commissioner and is an appropriate and an inaccurate statement as to the review of the Commission.

24. Conclusion of Law No. 8 is in derogation of the holdings of the Supreme Court. The Supreme Court has specifically held that the payment of any Award of the Commission dates back to the date of that Award where that Award is affirmed on appeal. As is addressed and as set forth hereinafter this Conclusion of Law and more importantly Conclusion of Law No. 9 through 29 are not included in the Order of Commissioner McCaskill affirmed by the Full Commission and in addition thereto are legal argument. It is unethical for a Commissioner or the Commission to seek legal advice without specific notice to the parties. In this case, the Record consists of the documents placed in the Record under the APA before Commissioner McCaskill and the law including the decisions, statutes and regulations as presented to Commissioner

McCaskill for decision. For the Commission, no matter who it is, to request a legal interpretation without advising the Petitioners that such legal interpretation was being requested or sought is a violation of Petitioners due process rights to be confronted by their accuser. These Conclusions of Law contain numerous legal positions and opinions and Petitioners have been given no notice of such legal interpretation or opinion. As to each Conclusion of Law set forth the Petitioners would further submit:

A. No. 10 is a legal analysis, cites Case Law that was not submitted to the hearing Commissioner or noticed to the parties including Curiel v. Environmental Management Services and cites improper legal opinion to the effect that in some way there is some kind of a difference between an award of permanent disability involving the payment of weekly payments of compensation benefits in reference to an award of attorneys fees, as compared to a permanent award as to the payment of compensation to a Claimant. This Conclusion is totally wrong under §42-9-10(D) and Glover by Carolton v. Suitt.

B. No. 11, the stop payment statute as referred to was not cited in the Commissioner's Order and has absolutely nothing to do with a permanent award. While this Conclusion is not included and should not have been made, it is further more unconscionable to place a chilling effect on a Claimant and

his/her right to a Claimant's attorney and to place the Claimant's attorney in an obvious conflict of interest and having to make a Hobsons's choice of whether or not to appeal or accept an amount less than awarded but which would increase his fees. In this case, had the Claimant's attorney's negotiated a settlement at the time of the Award for 95% of the Award at the time that it was made thus saving the Defendants 5%, they would have increased their fees by more than that requested which would not have been in the best interest of the Claimant. This Conclusion is also in violation of the Supreme Court Rules, Case Law and Statutory Law.

C. Conclusion No. 12 is contrary to Case Law and Statutory Law. The Award is final as of the date that it is made if it is affirmed on appeal. Those will not be addressed again, but this is legal opinion that is contrary to Case Law and Statute and to which counsel has never been given the opportunity to respond. Most respectfully, whoever wrote this decision under these legal principles has misinterpreted established Black Letter Law. See Case v. Hermitage Cotton Mills for a recitation of the principle that the Award of the Commission dates back to the date that the award was to start whenever it is finally resolved at whatever level. Also see the Amendments to S.C. Code §42-17-60 that clearly states that the award of the Commission made in reference to a permanent award

is held in abeyance during the pendency of an appeal and is then payable with interest and penalty thereafter back to the date of the first Award.

D. Conclusion of Law No. 13 and the footnote thereunder, specifically points out the whole problem with the legal decision being entered by the Commission and the Commission not following established Case Law. The footnote reads like a debate of two competing legal opinions between members of the Court of Appeals or the Supreme Court. The Commission is a quasi-judicial body and is charged with the responsibility of administering the law in accordance with the decisions of the Supreme Court, Court of Appeals and the statutes as implemented by the Legislature. It also has the authority to adopt Regulations in accordance with the statutes passed by the Legislature and most importantly, must follow its own Regulations once adopted. There is no reference to the requirement that Commissioner McCaskill was to immediately approve the attorneys fees or to amend it and return it or set the matter for hearing immediately.

E. Conclusion of Law No. 14 is simply a further dictation of a legal opinion and is likened to a brief. None of this was raised nor cited to the Commissioner or have the Petitioners been notified of any such legal interpretation and while Petitioners are criticized in the Findings of Fact this

legal interpretation by the Commission was never noticed to the Petitioners. Further, this Conclusion fails again to note the chilling effect this decision would have on the right of a claimant to obtain legal representation and also how it violates freedom of contract. The Petitioners should be allowed to respond to this interpretation and have an open-ended discussion in reference to this with the Commission at a minimum.

F. Conclusion of Law No. 15 is again a misstatement of law as the Supreme Court since 1940 and ever since then and the Legislature specifically since 2007 with the Amendments noted and specifically set forth that the Award dates back to the date that the permanent Award is made. This again would put a tremendous chilling effect on the right of a claimant to counsel and in addition would place counsel in a Hobson's choice in reference to the best interest of his client in reference to an appeal as does Conclusion of Law No. 16, 17 and 18.

G. As to Conclusion of Law No. 19, contrary to that Conclusion of Law, the Record is devoid of any evidence showing that it is not the Commission policy nor a Regulation or more importantly, statutory law to award an attorney(s) a one-third (1/3) fee of all benefits obtained under the Award of the Commission. Uncontradicted as an Officer of the Court as put into evidence and as the Commissioner should know, counsel requested to be placed under oath and the Commission accepted

his comments as an Officer of the Court that he had submitted in the past numerous fee petitions; that no Commissioner prior to this time has ever not approved those fees as requested; and that this is the first time any fee petition has ever been questioned in the at least 42 years that either of Petitioners has been practicing law. In fact, it is uncontradicted in the Record that every Commissioner that heard this matter en banc and also including the hearing Commissioner has approved attorneys fees from the date of the Award of the Commission. There is nothing in the Record nor any contradictory statement nor is there any statement by any Commissioner hearing this matter contradicting to that.

H. As to Conclusion of Law No. 20, there is a constant reference to the policies of the Commission. Without recitation, first there was nothing in the Record to establish that the requirements of §42-3-185 were complied with by the Commission in the adoption of its urgent Regulations concerning attorneys fees. In fact, this issue was not raised and is not part of the hearing Commissioner's decision. Further, there is nothing in the Record that it is not the policy of the Commission to award attorneys fees from the date of the final Award of the Commission. In fact, the Commission has no right to establish policies but has the statutory authority and responsibility to follow the statutes and the Case Law

interpreting the statutes and Regulations and to adopt, under law, Regulations to enforce the Workers' Compensation Act.

Prior to this controversy, the Commission cannot point to one Regulation, Statute or Supreme Court decision and in fact, the Commission is duty bound to follow its Regulations as adopted and not to re-interpret those based on an unpublished policy.

I. The paragraph as set forth hereinabove, Conclusion of Law No. 21 is just simply wrong. The power to approve attorneys fees is granted on a very limited basis but it is not limited to the Commission. Attorneys fees are subject to the approval of the Commission or a Court of competent jurisdiction. Further, while the section for approval of attorneys fees is set out, nowhere within the Commission's Order or even after numerous requests has the Commission ever produced the Senate journal, the House journal and/or the Acts and Joint Resolutions of the General Assembly nor is there any citation to those approving those Regulations of the Commission concerning attorneys fees prior to their implementation.

J. As to Conclusion of Law No. 22, there is no reference to that anywhere in the Commissioner's Order as there is no reference to No. 23.

K. As to Conclusion of Law No. 24, it is not actually a Conclusion of Law and is not based on the Record. The Commission has not set forth one example of where a fee as

requested in this case was not found to be in accordance with Statute, Case Law and Regulations prior to this situation. The Commission must base its findings on the Record and Petitioners uncontradicted statement in the Record that the fees as requested have readily been approved by the Commission in the past is not contradicted.

L. Conclusion of Law No. 25 has nothing to do with the issue other than public notice of a hearing as compared to the listing of parties on the notice that are parties to the action which is an elementary part of pleadings, due process and proper procedure.

M. Conclusion of Law No. 26 was not cited by the hearing Commissioner and although requested, the Commissioner advised of no communication with anyone concerning his position and in fact he refused to state his position on the Record. Also a party is entitled to due process and both the Commissioner and general counsel had an obligation to notify the Petitioners if such extra-judicial legal opinion was sought.

N. Conclusion of Law No. 27 is inappropriate as not being addressed in the hearing Commissioner's Order. However, it is further inappropriate in that there is no basis for a month and a half delay in addressing the attorneys fees request entered on December 8th.

O. Conclusion of Law No. 28 is not a conclusion of law and for all of the above-stated reasons is inappropriate.

P. Conclusion of Law No. 29 is an inappropriate Finding of Fact outside of the Record and misstates the Record. There has never been any challenge to the qualifications of Commissioner McCaskill to serve as a Workers' Compensation Commissioner. This Conclusion of Law is inappropriate and further does not go to the issue involved which is that the Commissioner is required to follow the law as dictated by the Statutes, Supreme Court decisions and Regulations and the Commission is required by law to provide the Petitioners and all parties with due process of law. Due process provides and requires notice of the issues to be presented and considered. At no time prior to or at the hearing, before the hearing Commissioner nor at the hearing before the Full Commission was Petitioners advised of the, "legal interpretation" of the Commissioner. Again, the Commission is not a Court. It is a quasi-judicial body and is required by law to follow the statutes, the Case Law interpreting those statutes and its own Regulations and to comply with the requirements that any outside legal advice is to be noticed to the parties.

CONCLUSION

The Petitioners respectfully request reconsideration pursuant to the decision of the South Carolina Supreme Court

including rehearing and an opportunity to address all of these issues.

At a minimum, the Commission should consider the Petition for Rehearing and should grant a hearing or recaption the case so that it is in compliance with law and should strike all Findings of Fact and Conclusions of Law that are not in accordance with the decision of the Commission which was simply to affirm the decision of Commissioner McCaskill as written.

Respectfully submitted by:



Preston F. McDaniel, Esquire
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083
Attorneys and Petitioners

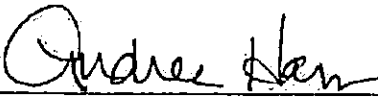
June 25, 2018

CERTIFICATE OF SERVICE

WCC File No.: 1307922

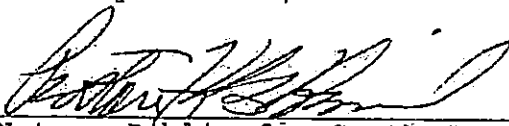
I hereby certify that I have on June 25, 2018 served the following in the matter of Pamela O. Cartee v. SC Judicial Department with a copy of the **MOTION FOR REHEARING CONCERNING THE FULL COMMISSION ORDER NOT PROPERLY SERVED AS OF THIS DATE PURSUANT TO §42-17-60** by depositing the same in the United States Mail, with adequate postage thereon, addressed as follows:

Pamela Cartee
1825 Woodbine Drive
Hartsville, SC 29550



Andrea Ham, Legal Assistant

SWORN TO BEFORE ME this
25th day of June, 2018.



Notary Public for South Carolina (L.S.)

My Commission Expires: 10/08/18

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1307922

EX-PARTE PRESTON F. MCDANIEL)
& JOHN M. MILLING, ATTORNEYS)
AT LAW, IN RE: FEE PETITION)
FILED IN WCC FILE NO. 1307922,)

Petitioners.)

IN RE:)

PAMELA O. CARTEE,)

Employee-Claimant,)

v.)

S.C. JUDICIAL DEPARTMENT,)

as Employer, and)

STATE ACCIDENT FUND,)

as Carrier,)

Defendants.)

MOTION FOR REHEARING OF
THE EN BANC DECISION OF
THE WORKERS' COMPENSATION
COMMISSION IN REFERENCE TO
ATTORNEY FEE PETITION FILED
IN SCWCC FILE NO. 1307922
REFILED AND SERVED BY REGULAR
MAIL ON JUNE 6, 2022

SCWCC
JUN 13 2022
JUDICIAL

Pursuant to agreement, the Commission Regulations and the statutory law, the Petitioners are filing this Motion for Rehearing pursuant to Regulation 67-215 for disposition en banc by the SC Workers' Compensation Commission. The Petitioners seek rehearing limited to the Petitioners' request for approval of attorneys' fees and would submit both a proposal for a prospective application of the current Commission's position and an argument for approval based on law:

- I. PROPOSAL FOR A PROSPECTIVE APPLICATION OF THE CURRENT COMMISSION'S POSITION ON THE DATE OF MAXIMUM MEDICAL IMPROVEMENT AND THE TRANSITION FROM TEMPORARY BENEFITS FOR THE PURPOSE OF CREDITS TO PERMANENT BENEFITS AND TO APPLY THAT SAME DISCRETIONARY POSITION TO FUTURE FEE PETITIONS BASED ON MAXIMUM MEDICAL IMPROVEMENT GOING FORWARD.

The Petitioners would submit that it is the current

practice of the current Commission which is in accord with our Appellate Court Decisions in reference to maximum medical improvement and the transition from temporary benefits to an Award for permanent disability benefits as far as a credit against a permanent Award that all of the Commissioners currently sitting on the Commission apply discretion based on the facts before them as to whether or not they will grant a "credit" and from what date against a permanent Award. This is especially true in circumstances where the Defendants have requested and filed a Form 21 request to stop payment of temporary total disability benefits and the Commissioner has made an Award.

The Petitioners would submit and believe all Commissioners will agree that there are times that the Defendants are given a credit pursuant to case law back to the date of maximum medical improvement. Sometimes depending on the time that the Form 21 is filed the Commissioners exercise discretion and do not give a credit prior to the date that the Form 21 was filed. In addition, the Commissioners exercise their discretion under the facts presented to them and grant no credit at all. Further, in cases where there are multiple dates of maximum medical improvement the Commissioners exercise their discretion, again, under the facts presented to them, to make an Award from the appropriate date under the facts presented back to which the Defendants are entitled to a credit. In all such where there is

a factual basis for the date chosen our Appellate Courts have affirmed the decisions.

In this case, there was a divergence of opinion expressed the Commissioners in the Full Commission Decision with two dissenting opinions which reflected that policy.

The Petitioners would submit that the Commission should grant the Motion for Rehearing, award the attorneys' fees as requested in this case, and apply a prospective application of the current Commission's position on attorney's fees which would allow the Commissioners in each case to review the facts and set a date back to which the attorney's fee petition would be approved. This would allow each individual Commissioner the discretion to review the attorney fee petition in accordance with their view of the facts and applicable date in each individual case. Under that policy each individual Commissioner would exercise his or her discretion when awarding attorney's fees back to the appropriate date under the facts; whether that be at the time of maximum medical improvement, at a transition from temporary to a permanent Award, or from another date based on maximum medical improvement and other factors such as delay or from the date of the Commission Decision, or another appropriate date; supported by the factual situation involved in the case.

The Commission could put out a policy that the Commissioners will exercise same discretion in approving attorney's fees in a running Award situation as they apply to a

credit. This would allow for a prospective application of the current Commission's position as to the permanent Award and a credit and apply the same discretion in approving attorney's fees and at the same time not punish and would allow for the approval of the attorneys' fees as submitted in this case. Petitioners would submit that they variably believe that the Commissioners all understand that this fee petition was submitted under case law, Regulations, and the policy heretofore of the Commission in reference to MMI and the transition from temporary total disability benefits to permanent disability benefits as being the date upon which the permanent "Award" attaches.

II. THE PETITIONERS WOULD SUBMIT THAT THE CURRENT FEE PETITION SHOULD BE APPROVED BY THE FULL COMMISSION AS BEING FILED IN ACCORDANCE WITH THE STATUTORY LAW, REGULATIONS, AND CASE LAW INTERPRETING THE DATE UPON WHICH A PERMANENT AWARD ATTACHES AT WHICH TIME THE ATTORNEY'S FEES ALSO ATTACH.

The Supreme Court and Court of Appeals have held that:

"Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further care or treatment which will lessen the period of impairment." O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 28, 459 S.E.2d 324, 327 (Ct. App. 1995). It is true that when a claimant is receiving temporary benefits, reaches maximum medical improvement and is still disabled temporary benefits are terminated and the claimant is awarded permanent benefits. Smith v. SC Dept. of Mental Health, 335 S.C. 396, 399, 517 S.E.2d 694, 696 (1999). ("The rationale for ceasing temporary benefits upon a finding of MMI is to permit entry of a permanent award...")." Bass v. Kenco Group, 366 S.C. 450, 622 S.E.2d 577 (SC App. 2005). (Emp. add.)

SC Code §42-15-90(A) (B) (1) (a) creates an exception to the sanctity and privity of the contract between an attorney and

their client as parties to the contract and allows and requires that any fee charged by an attorney, claimant or defendant, be approved by the Commission. The sanctity of the attorney's contract and the fee petition and the limitation on the Commission's authority to approve attorney's fees is embodied in SC Code §42-3-185 which requires places procedural requirements on any regulation seeking to implement the provisions of §42-15-90 in reference to the attorney's fees of both the claimant and the defendants. (For purposes of this argument it is assumed that the current Regulation was properly promulgated and received approval by both the Judiciary Committees of the Senate and House of Representatives, and also a Concurrent Resolution of the General Assembly before promulgation under the Administrative Procedure Act which is a mandatory requirement under that Statute for any attorney's fees Regulation to be valid.)

Under its authority the Commission has adopted Regulations for the reporting of attorney's fees and for determining a reasonable fee in accordance with the Supreme Court Disciplinary Rules and pursuant to the Act. Under those Regulations and specifically Regulation 67-1205(C)(2) the Commission has provided that where a claimant is receiving temporary total disability benefits in a case where the attorney then obtains a final "Award" as follows:

"If the attorney secures the payment of permanent disability later, the attorney may charge, according to these Regulations, up to but not more than 33.3% of the settlement or Award."

Under his Award of total and permanent disability to Ms. Cartee, Commissioner McCaskill determined that Ms. Cartee had reached maximum medical improvement on October 12, 2016, and in his Order specifically provided that the total and permanent disability was for the balance of 500 weeks from that date forward which was to be calculated and paid in a lump sum. As noted under both the Commission's Regulations and the Supreme Court and Court of Appeals' decisions, the date of maximum medical improvement is the date upon which any weekly benefits or benefits transition from being the payment of temporary disability benefits to an "Award" of permanent disability benefits. In the case of Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (1999):

"Workers' compensation benefits accrue along a time continuum: temporary total disability (TTD) benefits are available from the date of the injury through the date of maximum medical improvement (MMI), and post-MMi benefits may be awarded either as a permanent, total or partial disability, or as a percentage of impairment to a scheduled member". (Emp. add.)

Thus under law the permanent "Award" attached as of the date of MMI under Commissioner McCaskill's Order which is the same date when the "Award" of permanent and total disability attached that the attorneys in this case had "secured" for Ms. Cartee. Their attorneys' fees which is limited to 1/3rd of the "Award" was calculated on the basis of the value of the Award of total and

permanent disability benefits that they secured for Ms. Cartee as of that date.

In further support of this position and interpretation, which is clear under law, to entertain any date past that date would create a moving target and would actually pit the attorney against their client because it would create a situation wherein the attorney's fee petition would be ever decreasing and would encourage or place a conflict of interest between the attorney's interest in his attorney's fees and the best interest of the client as to the Award and especially a total and permanent disability award with accompanying lifetime medical benefits.

In addition, it appears to be the Commission's position that the "Award" of the Commission is not final until the final Decision of the Full Commission, which is not true and is totally inaccurate under law. The "Award" is actually not final until a final Decision is entered after an appeal. That can be many, many dates: the date of the Full Commission Decision; the date of a Decision on Reconsideration of the Full Commission decision; the date of the Decision by the SC Court of Appeals (COA); the date of the COA Decision on a Motion for Rehearing; the date that a Petition for a Writ of Certiorari is denied; the date of the Decision by the SC Supreme Court if certiorari is granted; the date of a Decision on Rehearing; or the date that the Remittitur is sent down from the Supreme Court.

In support of this position, SC Code §42-17-60 provides

that after appeal to the Appellate Courts that the defendants have to start paying weekly payments of compensation towards the "Award" but it also provides that interest accrues on any unpaid portion of the "Award" during the pendency of the appeal, in other words back to the original date of the Award. There have been numerous cases decided under SC Code §42-17-60 and most those are specifically reviewed in the case of Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960). In Case and the decisions its reviews, the Award attaches from the original date of the Award by the Commission backdated to the date that the Award starts from or in other words, from the first payment of weekly compensation under an Award of the Commission forward. Whether it is an Award made by a Hearing Commissioner and not appealed or where it is appealed to the Full Commission, and is affirmed at that level, the Award starts from and dates back to the original date of the Award. If it is appealed to the Appellate Courts it still dates back to the original date of the Award or if there is an Award denied by the Hearing Commissioner and then awarded at the Full Commission it dates back to the date that the Full Commission says that the Award was to start.

Next, the Petitioners variably believe that the Commissioners upon reflection will remember that at least five (5) members of the current Commission have approved attorney's fees back dated to or from the date of maximum medical improvement. Specifically, Petitioner McDaniel would submit that

attorney's fees backdated to the date of maximum medical improvement have been approved by Commissioner James, Commissioner Campbell, Commissioner Barden, Commissioner McCaskill and Commissioner Wilkerson. (Because of sanctity, privacy of records, attorney/client, and limited exception to approve, Counsel will be glad to discuss the individual claims referenced with any of the named Commissioners assigned to approve the attorneys' fees in those claims should they not remember or disagree. Generically: Deli Manager, Deputy Sheriff, State Investigator, Call Center Manager, Truck Driver.)

Finally, the Fee Petition in this matter was submitted, the Petitioners would submit, under the long-standing interpretation of the Regulations and Statute and based on the past experience of Counsel with the Commission and with at least five (5) of the current sitting Commissioners in reference to the attorney's fees that were requested. If the Commission can submit or would be willing to provide any information that any petition submitted by Petitioner McDaniel prior to the date of this submission was ever denied in reference to a request for attorney's fees from the date of the Award forward, the Petitioners would humbly and most respectfully love to have that produced.

The Petitioners have absolutely no desire nor is it in their best interest to be at odds with the Commission and humbly believe that their fee petition was submitted in accordance with

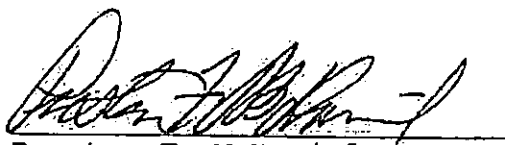
the law and in accord with the Supreme Court and Court of Appeals' decisions, the Commission Regulations, and the long-standing policies as to attorney's fees of the Commission.

While not directly related to the argument, the Petitioners would also point out that Ms. Cartee has advised this Commission by letter that she was fully explained the fees in this case and only wished that she could pay the Petitioners more for what they had done for her. Also, the Petitioners after their involvement increased the Claimant's compensation rate from \$514.39 to \$698.41, a difference of \$184.02, thus resulting in a benefit to Ms. Cartee over the life of the claim and the Award of \$92,010.00, almost \$20,000.00 more than the fee requested.

Wherefore for the foregoing reasons the Petitioners would seek rehearing and reconsideration of the fee petition submitted, which was submitted in accordance with law and Regulation and the long-standing interpretation and policy of the Commission in approving attorney's fees from the date of the Award of permanency; and/or that the Commission apply its new policy or the current Commission's current interpretation in a prospective manner such that each Commissioner reviewing a future fee petition will have the discretion to make an Award of attorney's fees in accordance with their view of the facts and circumstances that exist at that time in that case and award the attorneys' fees requested in this case on the basis that they were submitted prior to the knowledge of any change in the

policy of the Commission in reference to attorney's fees and also based on the historical knowledge of the Petitioners in reference to attorney's fees that had been approved in the past including and by Commissioner McCaskill, Commissioner Wilkerson, Commissioner Barden, Commissioner James and Commissioner Campbell, and the Claimant variably believes also Commissioner Beck and Commissioner Taylor.

Respectfully and humbly submitted,

A handwritten signature in black ink, appearing to read "Preston F. McDaniel", is written over a horizontal line.

Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

On Behalf of Preston F. McDaniel
and John Milling, Petitioners

June 10, 2022

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

**Proudly representing injured workers
for over 35 years.**

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

June 27, 2022

VIA EMAIL: abracy@wcc.sc.gov
& US MAIL
Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

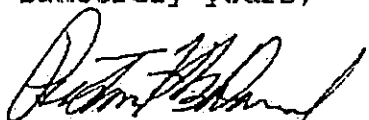
RE: Ex-Parte Preston F. McDaniel & John M. Milling,
Attorneys at Law, in Re: Fee Petition filed in
WCC File No. 1307922

Dear Ms. Bracy,

Please find enclosed for filing with the Commission the original and one copy of my Affidavit in reference to the Motion for Rehearing of the En Banc Decision of the South Carolina Workers Compensation Commission in reference to the Attorney Fee Petition Filed in SCWCC File No. 1307922 refiled and served by regular mail on June 6, 2022 in the above referenced matter.

I hope this is sufficient for filing the Affidavit with the Commission. If additional information is needed, please feel free to contact me at your convenience. By copy of this letter, I am sending a copy to Ms. Cartee and to John Milling.

Sincerely yours,


Preston F. McDaniel
Attorney at Law

PFM/rmt

cc: John Milling
Ms. Pamela O. Cartee

SCWCC
JUN 29 2022
JUDICIAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1307922

EX-PARTE PRESTON F. MCDANIEL)
& JOHN M. MILLING, ATTORNEYS)
AT LAW, IN RE: FEE PETITION)
FILED IN WCC FILE NO. 1307922,)

Petitioners.)

IN RE:)

PAMELA O. CARTEE,)

Employee-Claimant,)

v.)

S.C. JUDICIAL DEPARTMENT,)

as Employer, and)

STATE ACCIDENT FUND,)

as Carrier,)

Defendants.)

**AFFIDAVIT OF
PRESTON F. MCDANIEL**

I, Preston F. McDaniel, having been duly and properly
sworn, do depose and state:

1. That I am a licensed practicing attorney in the State
of South Carolina. I was first admitted to practice of Law in
November of 1976, and I have been practicing before the Workers'
Compensation Commission first as an Assistant Attorney General
for the State of South Carolina under Attorney General Dan
McLeod, beginning in 1981 and after leaving the Attorney
General's office and after being General Counsel/Chief Staff
Attorney for the State Accident Fund and practicing solely

before the Commission I have practiced before the Commission consistently from March 1984 through the present time. In the 1980's I was invited to and attended the Wampee Conference at the Santee Cooper Wampee Conference Center on Workers Compensation and in 1990 served on the Claimants Review Committee for the soon to be adopted South Carolina Workers Compensation Commission Regulations, which included for the first time the Attorneys Fees Regulation R. 67-1201-1207, which were added to the State Register effective September 2, 1990. In my capacity as either a Board of Governors, Section Chair or Officer of the South Carolina Trial Lawyers Association, now the South Carolina Association for Justice; and/or as a Sustaining Member or Officer of the Association of South Carolina Claimant's Attorneys for Workers Compensation, now the Injured Workers Advocates, I have served on every Claimants Legislative Reform Committee since 1990, including the 2007 Workers Compensation Reform Act. I was also the sole Claimant's Representative appointed to serve on Governor Sanford's Workers Compensation Reform Committee; whose membership included Commissioner Wilkerson.

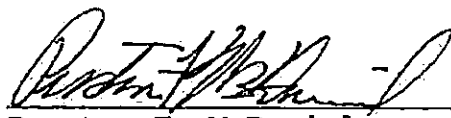
2. That in my capacity as a Claimant's Attorney before the Commission after the Attorney's Fees Regulations first went into effect in 1990, I have submitted hundreds of fee petitions to the Workers Compensation Commission, over the years

requesting approval of Attorney's fees and costs as the Attorney for the Claimant whose claim was pending before the South Carolina Workers Compensation Commission. Prior to the submission of the fee petition that is the subject of this action, it was the long standing interpretation and application of the Commission under the Statutes, Regulations and Court decisions that the attorney's contingency fees attached and are calculated from the point of and at the time of the "Award" of permanent disability benefits. Specifically in a case where a Claimant was on a running "Award" of temporary total disability benefits and the Attorney then obtained, and a permanent Award was made, the date of maximum medical improvement was the date upon which the attorney's fees attached and were calculated because that was the date the "Award" became permanent; again unless the Order specifically provided a different date on which the permanent "Award" of benefits attached. The date of maximum medical improvement, in accordance with our Appellate Court decisions constituted the date upon which the Award transitioned from an Award of temporary disability benefits to an "Award" of "permanent" disability benefits and is the date upon which the attorney's fees, of the Attorney who obtained the "Award" of permanent benefits attached under R. 67-1205(C).

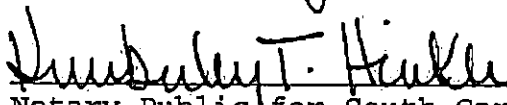
3. That I have submitted numerous fee petitions to the Commission, calculating the attorney's fees on the above basis,

or in other words, from the date of maximum medical improvement, or from the date upon which the Commission determined that the Award of permanent disability benefits attached. None of those previous attorney fee petitions have ever been questioned by the Commission prior to this current petition that is in question. I have submitted several such attorney's fee petitions to members of the current Commission. [Note, because the approval of attorney's fees by a Commissioner is an exception to the sanctity of both the attorney/client privilege and of contract and because the Records of the Commission are confidential names of clients will not be set out.] While I believe all acting Commissioners have approved such Petitions, the following come immediately to mind - Commissioner McCaskill (call center employee); Wilkerson (truck driver); James (deli manager); Campbell (SCAG-investigator; Barden (?).

FURTHER THE AFFIANT SAYETH NOT.


Preston F. McDaniel

SWORN TO BEFORE ME this
27th day of June, 2022.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 6-19-30

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1307922

EX-PARTE PRESTON F. MCDANIEL)
& JOHN M. MILLING, ATTORNEYS)
AT LAW, IN RE: FEE PETITION)
FILED IN WCC FILE NO. 1307922,)

Petitioners.)

IN RE:)

PAMELA O. CARTEE,)

Employee-Claimant,)

v.)

S.C. JUDICIAL DEPARTMENT,)

as Employer, and)

STATE ACCIDENT FUND,)

as Carrier,)

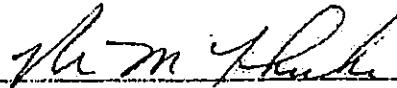
Defendants.)

CERTIFICATE OF SERVICE BY
MAIL

I hereby certify that on the 10th of June 2022 in the matter of Ex-Parte Preston F. McDaniel and John M. Milling, Attorneys at Law, in Re: Fee Petition Filed in WCC File No. 1307922, that the original and copy of **THE AFFIDAVIT OF PRESTON F. MCDANIEL** concerning **PETITIONERS MOTION FOR REHEARING**, was served by depositing the same in the United States Mail with adequate postage thereon, addressed as follows:

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202; and

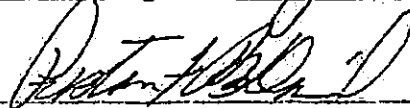
Pamela O. Cartee
1825 Woodvine Drive
Hartsville, SC 29550



Rose M. Thielke

SWORN TO BEFORE ME this

27 day of June, 2022



(L.S.)

Notary Public for South Carolina

My Commission Expires: 10/25/28

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Preston F. McDaniel, Esquire and
John M. Milling, Esquire

Plaintiffs,

v.

South Carolina Workers' Compensation
Commission,

Defendant.

IN RE:

**South Carolina Workers' Compensation
Commission**

WCC File No. 13079222

COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

2018-CP-16-00334

JOINT STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1), SCRCPP, the parties hereby stipulate and agree to dismiss this action with prejudice.

I so stipulate:

s/ Harley L. Kirkland
HARLEY L. KIRKLAND
ASSISTANT DEPUTY ATTORNEY GENERAL
Office of the Attorney General
SC Bar Number 100382
PO Box 11549
Columbia, SC 29211
Phone: (803) 734-0406
HKirkland@scag.gov

ATTORNEY FOR THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

We so stipulate:

s/ Preston F. McDaniel (signed with consent)

Preston F. McDaniel

McDaniel Law Firm

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And

s/ John M. Milling (signed with consent)

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PLAINTIFFS

June 29, 2022

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

) IN THE COURT OF COMMON PLEAS
)
) FOR THE FOURTH JUDICIAL CIRCUIT

PRESTON F. MCDANIEL, ESQUIRE,
and
JOHN M. MILLING, ESQUIRE,
Plaintiffs,

C/A No.: 18-CP-16-0334

v.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION,
Defendant.

IN RE:

South Carolina Workers
Compensation Commission
WCC File No.: 1307922

AMENDED AND SUPPLEMENTAL
COMPLAINT

PAMELA CARTEE,

Employee-Claimant,

v.

SOUTH CAROLINA JUDICIAL DEPT.,

Employer, and

STATE ACCIDENT FUND,

As Carrier,

Defendants.

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

FILED
2018 AUG 28 AM 11:11
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

The Plaintiffs, Preston F. McDaniel, Esquire and John M. Milling, Esquire, would respectfully show unto the Court as follows:

I. INTRODUCTION

1. That this action is filed by the Plaintiffs under the South Carolina Declaratory Judgment Statute, S.C. Code §15-53-10, 20, 30, et seq. and under the Administrative Procedures Act and particularly S.C. Code §1-23-150 requesting a declaration of rights and a declaration as to numerous legal/interpretation issues specifically including: A) whether the current Commission Regulations in regards to attorneys fees and specifically Regulations 67-1204 through 1207 were properly adopted in accordance with the provisions of S.C. Code §42-3-185 which sets forth specific requirements for review by the Legislature of any such "proposed Regulations shall have before promulgation" received approval by various standing bodies and the General Assembly; B) a declaration as to whether the Regulations in reference to "immediate" approval and if there is a disagreement, an "immediate" hearing have been complied with and whether improper procedure was followed in the consideration of the Fee Petition in question in this matter; C) a declaration as to whether proper procedure was followed as to the "parties" listed and served as parties to the hearing before the hearing Commissioner concerning approval of the unapproved portion of

attorneys' fees requested and before the Full Commission and in the captioning of the case as to the parties before the Commission and the refusal of the Commission to amend the caption to properly reflect the parties; D) whether proper procedure was followed in the appellate process; E) whether the Commission in the appellate process went outside of the Record; F) whether the Commission without notice to the parties and in violation of the Ethics Act considered outside legal opinion; H) whether the Commission exceeded its authority in reference to the review and whether or not the Commission violated its Rules and Regulations, Statutory Authority and Case Law and its own Policies and Procedures in reference to the consideration by the Full Commission of the Appeal filed by the Plaintiffs; I) whether the Full Commission Order is: in compliance with the vote of the Commission, was there error in the issuance of the Order, is it based on evidence outside the Record, outside legal authority and/or legal opinion, was there error in being written and being assigned to be written by not only a Commissioner but a non-Commissioner, and throughout the Full Commission process was there improper procedure without any notice to the parties that any legal opinion was being sought or expressed or considered outside the Record; J) after issuance of the Full Commission Order in the refusal to properly caption and properly serve all parties in violation of statutory and case law and

more particularly the Rules and Regulations of the Commission and in particular in reference to the Statutory Laws of the State of South Carolina in reference to service of an Order of the Commission upon the parties, and further;

K) As set out in the prayer, the Plaintiffs would pray for a declaration as to whether the orders of the Commission and the Rules and Regulations and Procedures followed and the new interpretation of the words "award or settlement" which is contrary to the interpretation since 1936 and since the 1991 Regulation have a chilling effect upon the right to counsel and are thus unconstitutional; and L) whether in addition thereto they are unconstitutional as violating the freedom of contract, provisions of the South Carolina Constitution where such fee agreement is in accordance with Rules of the South Carolina Supreme Court under SCACR Rule 407 Professional Conduct, Rule 1.5 FEES;.

M) Where since 1991 through this present order, the Commission has always approved fee petitions identical to the one submitted in this case which was denied, does this new interpretation deny Plaintiffs' equal protection of the laws?

N) Do the procedures followed by the Commission, failure to follow Supreme Court precedents and failure to notify the Plaintiffs of outside legal opinion due to the Plaintiffs' due

process of law; especially as to notice and the right to confront one's accuser.

O) Under the Declaratory Judgment Statute as set forth hereinabove and under the Administrative Procedures Act and particularly under §1-23-380 which sets out in §5(a-f) specific errors of law that are reviewable as set out hereinafter and since it is alleged that "Constitutional and Statutory Provisions" (§5(a)) have been violated and/or that the Procedures and Orders of the Commission are in violation of the "Constitution and Statutory Provisions"; and since it is alleged that the Orders and Procedures "exceed the statutory authority of the Agency" (§5(b)); and since it is alleged that the Procedures and Orders of the Commission were "made upon unlawful procedure" (§5(c)); and since it is alleged that they are "affected by other error of law", (§5(d)) the Plaintiffs request an Order allowing for Discovery pursuant to S.C. Code §1-23-380; and the Declaratory Judgment Action §15-53-10 et seq. and under §1-23-380(4) because of the alleged irregularities in procedure in violation of Statutory Law and Constitution and Regulatory Law not appearing in the Record so that the Plaintiffs can discover and admit extrinsic evidence concerning the alleged irregularities in the Agency's proceedings. Ross v. Medical University of South Carolina, 317 S.C. 377, 453 S.E.2d 880 (1994),

"a reviewing Court has the duty to examine the procedural methods employed at an administrative hearing to ensure that a fair and impartial procedure was used."

Finally, praying for a declaration of their rights under the provisions of S.C. Code §42-15-90 and whether the Regulations concerning attorney's fees were properly adopted in accordance with S.C. Code §42-3-185 and a declaration if properly adopted under the cases decided by the South Carolina Supreme Court in reference to the date upon which an "Award" of the Commission is permanent as to their entitlement under the Statutes, Regulations and decisions of South Carolina Appellate Courts to the entire fee as requested and submitted to the Commission for approval on December 5, 2017 as being in accordance with law; and declaring that the Order which was not rendered by the Commission until March 8, 2018, wherein the fee petition was only partially awarded, and the Full Commission Order issued on May 31st, 2018 are contrary to the provisions of the Statutes, Regulations, case law and the requirements thereof.

II. PARTIES

2. That the Plaintiff, Preston F. McDaniel, is a resident of Richland County and the Plaintiff, John M. Milling is a residence of Darlington County.

3. The South Carolina Workers Compensation Commission is an agency of the State of South Carolina and is responsible for administering the South Carolina Workers Compensation Act with its main office being in Columbia, SC and which has statewide jurisdiction for the administration of all claims under the South Carolina Workers Compensation Act, S.C. Code §42-1-10 et. seq., including Darlington County wherein and from which county the matter of Pamela Cartee v. The South Carolina Judicial Department and the South Carolina State Accident Fund arose and was filed as WCC File No 1307922.

III. JURISDICTION AND VENUE

4. That this Court has jurisdiction over this declaratory judgment action as the Court of general jurisdiction for the State of South Carolina and specifically under the provisions of the Declaratory Judgment Act under South Carolina Code §15-53-10 et. seq., under which this action is brought. Venue is proper in that the fee and representation contract between Ms. Cartee and Plaintiffs was entered into and the disputed fee and the declaration of rights under the Statutes, Regulations and the controlling authority of the Commission over attorneys' fees arises out of a workers' compensation action arising out of the County of Darlington, that being Pamela Cartee v. The South Carolina Judicial Dept. and The South Carolina State Accident Fund.

IV. DECLARATORY JUDGMENT ACTION LAW AND RELIEF SOUGHT

5. That in the matter of Pamela Cartee, Employee/Claimant
v. the South Carolina Judicial Dept., Employer and the State
Accident Fund, Carrier, WCC File No. 1307922, Commissioner Gene
McCaskill filed an Award on April 17, 2017 finding the Ms.
Cartee had reached maximum medical improvement (MMI) on October
12, 2016 and award making a compensation to her as of that date
for total and permanent disability entitling her to:
"the payment of continuing weekly compensation
benefits in the amount of \$698.41 and continuing
until 500-weeks of compensation have been paid."
A copy of the Award was attached to the original Complaint as
Exhibit "A".

6. That, the, "Award" was appealed based on a Request for
Review filed by the Defendants on April 26, 2017 by the filing
of a SCWCC Form 30 and attaching to that Form 30 the alleged
issues of law and fact that the defendants wanted considered.
Attached to the original Complaint as Exhibit "B".

7. That subsequent thereto the Full Commission issued its
Decision affirming the "Award" of Commissioner McCaskill which
was filed on October 17, 2017. A copy of that Decision was
attached to the original Complaint as Exhibit "C".

8. That subsequent thereto, the decision of the South
Carolina Workers Compensation Commission affirming the, "Award"
was not appealed and subsequent to the 30-day appeal provision

running, the claimant made a request for the payment of the residual value of the, "Award" in a lump sum pursuant to the provisions of South Carolina Workers Compensation Act. Calculation of the residual value of the "Award" was made by the Defendants and was attached to the original Complaint as Exhibit "D".

9. That on December 5, 2017, the Plaintiffs, Claimant's counsel pursuant to Statute, Regulations and case law filed a Fee Petition based on the date of the permanent "Award" requesting the approval of attorney's fees along with an itemized statement of costs and WCC Form 61, attached to the original Complaint as Exhibit "E".

10. That subsequent thereto and the Fee Petition having not been "immediately" approved, amended and/or a hearing noticed as required by Regulation, the Plaintiffs contacted the Commission continuously between December 8, 2017 and January 9, 2018, via email, letter, and by personal appearance at the Commission (x3) in an effort to determine why the Petition had not been approved as will be set forth in the evidence, if not agreed to in the responsive pleadings filed by the Commission as the Defendant in this matter.

11. That finally over a month later, on January 9th an email was received from the lay Commissioner noting that the Commissioner was approving a portion of the fees requested but

that based on his, "legal opinion", "I have also reviewed the law I believe applicable", he was not approving a portion of the attorneys' fees in the amount of \$13,461.76.

12. That prior to the email of January 9th and subsequent thereto the plaintiffs notified Commissioner McCaskill that the statutes and regulations require that a Commissioner either immediately approve or, "shall immediately" set a hearing on the fee petition [W.C.C. Reg. 67-1204(F)] as submitted to the Commission for approval. In this case, the fee petition was submitted on December 8, 2017 and only after the Plaintiffs, noted to the Commissioner that the Commissioner had not complied with the statute and regulations and that it had been over a month, and requested that a hearing be set in this matter was a hearing set.

13. That subsequent thereto on January 17, 2018, a hearing was set for February 12, 2018. Contrary to the Code of Ethics, Statutes and Regulations, counsel for the Employer and Insurance Carrier was served with notice of that hearing who waived appearance as not being involved as a party. At the hearing, documents were put into evidence confirming all of the emails, letters and attempts made at trying to have a discussion with the Commissioner to determine what, if any, problems there were with the fee petition as submitted. At the hearing, the Commissioner at that point was presented in written form with

the statutory authority, the regulations and the case law supporting and establishing that the Fee Petition as submitted was in accordance with law, to which no objection or contrary position was taken by the Commissioner. However, the Commissioner did not rule and took the matter under advisement.

14. That subsequent thereto, having heard nothing and the decision to not approve the Fee Petition as submitted, according to the understanding of the Plaintiffs being that the hearing Commissioner, a lay Commissioner, without legal training was of the, "legal opinion" that the fee requested was not in accordance with law, under the statute, regulations, and case law, the Plaintiffs asked the Commissioner to open the Record and to place his position on the Record; which the Commissioner refused to do.

15. That subsequent thereto, on March 8th, the Plaintiffs received an Order from Commissioner Gene McCaskill, the assigned Commissioner for review and approval of the attorneys' fee petition and the portion of the fee in contest, denying the balance of the Fee Request. Further, upon information and belief and based upon a review of that Order and the basis for a denial of the balance of the fees requested being based on legal opinion/interpretation and knowing the Commissioner is a lay Commissioner not trained in the law and analysis, the Plaintiffs verifiably believe that these facts establish that the

Commissioner without notice to the Plaintiffs and outside of Record sought outside legal opinion and advice in violation of law and the Judicial Code of Ethics.

16. That subsequent to the March 6, 2018 Order, 'the Plaintiffs wrote the Judicial Director with a copy to General Counsel asking for a declaration of the authority that would allow for Commission Review of an attorneys Request for Approval of Attorney's Fees and specifically any Statutory and Regulatory authority of the Commission for such a review and requested an opinion from General Counsel for the Agency as to the proper parties to such action and who are to be listed in such action both before the hearing Commissioner and in the Commissioner's Order and as to who are the parties that are served and as to who are parties to the Request for Approval of a Petition for Attorney's Fees and asking for a Statutory and Regulatory review as to the ethical and legal implications concerning the hearing Commissioner's Order in reference to and asking for an opinion concerning whether the involvement of any other parties other than the attorney and the client in the hearing and Order or Review by the Full Commission would be interference with the attorney-client privilege violative of the contractual relationship between the attorney and the client and violative of the confidentiality of attorney-client relationship and contract.

17. That on March 20, 2018 the Plaintiffs filed what will be referred to a Provisional Notice of Intent to Appeal and again requested a response from General Counsel concerning the Statutory and Regulatory Authority for Commission Review and as to the ethical and legal implications concerning this situation over the attorney-client fee contract and the request for approval of attorney's fees and barring a response from General Counsel as to the proper captioning, proper parties, Statutory Authority, Regulatory Authority for said Petition and requesting that the Request for Full Commission Review be held in abeyance pending a written response or assuming that no response would be forthcoming for a period of at least thirty (30) days.

18. That on March 26, 2018 the Plaintiffs received a Hearing Notice setting the matter for review by the Full Commission on May 16, 2018 listing as parties and with a copy of the Hearing Notice to the Defendants, the Employer and its insurance carrier, through their attorneys in addition to both Plaintiffs Mr. Milling and Mr. McDaniel and with notice to Ms. Cartee, the Claimant. Without explanation, Reset Notice was received that afternoon setting the matter for an en banc hearing. The Plaintiffs then received another Reset Notice setting the matter for hearing on May 21, 2018, again with all Defendants to the original action being served as party to that action. At the time this matter was set for en banc review, the

Claimant requested confirmation as to why an en banc review was being set and whether or not it was requested in accordance with the Commission's Regulations. As set forth in the emails, the Plaintiffs were originally advised that a written request was not made for en banc review and that the review was being set pursuant to the Commission policy that all attorney fee disputes are heard en banc. Subsequently, upon request by the Plaintiffs for a copy of the Commission Policy, the Plaintiffs were advised that the hearing Commissioner had made a request but is was verbally and that the Commission Policy was unwritten.

19. That based on the original Declaratory Judgment action filed with the Court, this Court issued a Temporary Stay Without Notice on April 17, 2018 restraining the Commission from taking any further action on the Appeal and by letter dated April 23, 2018, the Judicial Director was advised by the Plaintiffs that no further action was to be taken. However, the evidence will establish that the Commission did not acknowledge or comply with the Temporary Restraining Order and on April 23, 2018, the Plaintiffs filed a preliminary Brief in accordance with the Regulations having not been notified that the Commission would comply with the Restraining Order and the Stay as to all further matters.

20. That in addition to requesting by letter (petition) a declaration under the Statutes and Regulations as to who the

proper parties were to this action, in all pleadings in reference to the Judicial Review; and in all pleadings and letters and documents filed with the Commission; and in the Request for Review, the Request for Review was captioned, as the Appellants being both Preston F. McDaniel and John M. Milling.

21. That at a hearing before this Court on the original Complaint and the Temporary Restraining Order issued without notice, the Temporary Restraining Order issued without notice was allowed to lapse allowing the Full Commission to rule on the Request for Review.

22. That on April 30, 2018 the Plaintiffs wrote the Judicial Director with a copy to the Assistant Director over Full Commission Reviews requesting that the preliminary Brief be supplemented with copies of the case law authority submitted to the original Hearing Commissioner; requesting information as to whether the Decision on the Plaintiffs' attorneys fees and appeal of the Decision would be published and inquiring whether the provisions of §42-17-40 had been complied with in reference to the Transcript.

23. That subsequent to the hearing on May 21st, on May 30, 2018 contrary to service required by Statute, Plaintiff Preston F. McDaniel received a copy of the Decision of the Workers' Compensation Commission via email filed May 30th. On May 31st, the Plaintiffs notified the Judicial Department that the

Appellants would be filing a Petition for Rehearing within thirty (30) days and requested that a revised Order be filed and served on the basis that the Order was improperly captioned and failed to note the parties of Record, and specifically noting that one of the Plaintiffs, John M. Milling, had not been served at all. The letter further requested in accordance with the Regulations, a copy of the Vote Sheets of the Commission. The letter also noted that the Plaintiffs had been advised that the Hearing Commissioner had not requested an en banc hearing and that the matter had been set pursuant to Commission Policy and requested a copy of the Policy. The request also noted that multiple members of the Commission's staff were present prior to and during argument and requested the court reporter's notations as to who was present, and again requested pursuant to Statute to be advised as to whether or not the Hearing Transcript had been filed with the Commission.

24. That by email on June 1, 2018 the Judicial Director advised Plaintiff Mr. McDaniel that no revised Order would be submitted as the Commission did not consider Mr. Milling a party to the action; provided a copy of the Vote Sheets pursuant to Regulation 67-709(C) advised that there was no written Policy providing for an en banc hearing concerning attorney's fee disputes and that it was a policy in practice; and that the Hearing Commissioner had made a request but he had made it

verbally. The email also refused to acknowledge whether or not the Transcript had been filed in accordance with S.C. Code §42-17-40. According to the Vote Sheets which were attached to the email, four (4) Commissioners voted on the Vote Sheets simply to, "affirm" the Hearing Commissioner's Decision. Commission Regulation specifically requires that if there is any change or alteration made to the original Hearing Commissioner's Order that the Commissioners are to state in writing any modifications or changes or additional Findings of Fact or Conclusions of Law that are made on review. There are no Findings of Fact, Conclusions of Law or alterations or modifications to the original Hearing Commissioner's Order listed on any of the Vote Sheets of the four (4) Commissioners that voted to simply "affirm" the Decision. See: WCC Regulation 67-709(E) (2). Further, the Vote Sheets note that the Order was to be written by Commissioner T. Scott Beck but was also assigned to a non-Commissioner General Counsel for the Agency. The Full Commission Order that was issued contained a completely different set of Findings of Fact wherein the Hearing Commissioner's Findings of Fact and Conclusions of Law which were simply voted by the majority as being, "affirmed" consisted of four (4) combined Findings of Fact and Conclusions of Law. To the contrary, the Full Commission Decision consisted of twenty-two (22) Findings of Fact and twenty-nine (29) detailed

Conclusions of Law. The evidence will show that the Findings of Fact went outside of the Record before the Commission and that the Conclusions of Law contained multiple legal citations and Conclusions of Law that were not submitted to the Commission as part of the Request for Review or are reflected in the Record.

25. That S.C. Code of Law §15-53-20 provides that this Court has the power to declare the rights of the Plaintiffs under their contract and under the statutes applicable to the approval of their fee request as submitted to the South Carolina Workers' Compensation Commission. Under §15-53-30, any person interested or who has a property interest in any written contract or,

"whose rights, ... are affected by a statute, ... contract ..., may have determined any question of construction or validity arising under the ..., statute, ... and obtain a declaration of rights, ... thereunder."

26. That normally under law, a fee "contract" between an attorney(s) and the (his/her/their) client is a matter of contract law subject only to the Code of Professional Responsibility. However, in a workers' compensation action, S.C. Code §42-15-90(A), attorneys fees, physician fees and hospital charges for services under this title are subject to the approval of the Commission and subsection (B)(1) provides for that a person may not receive a fee or consideration for a service rendered pursuant to the title unless the fee, ... "is

approved by the Commission or a court of competent jurisdiction ...". S.C. Code §42-3-30 provides the authority of the Commission to promulgate Regulations relating to the administration of the workers' compensation laws necessary to implement the provisions of the Title but also that those Regulations must be, "consistent therewith". Further, S.C. Code §42-3-185 provides specific and special requirements in reference to policies and procedures and Regulations established for implementing the provisions of §42-15-90 concerning attorney's fees and specifically provides that any such policies or procedures shall only become effective when such implementation is accomplished by Regulations promulgated in accordance with the Administrative Procedures Act but which,

"proposed regulations shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent resolution of the General Assembly."

S.C. Code §42-17-70 provides that the Circuit Court is the Court of "competent jurisdiction" over Commission Awards.

27. That pursuant to the authority of the Commission to implement Regulations, which are void ab initio if not adopted in accordance with S.C. Code §42-3-185, the Commission has adopted Regulations in reference to attorney's fees and the approval of attorney's fees. Regulation 67-1204(A) provides

that all attorneys shall report and obtain approval of any fee for services in accordance with the Regulations in reference to a workers' compensation claim. Subsection (D), provides that the attorney is to file a Form 61 and a proposed Order, and the Order may be signed and returned to the attorney(s) when the calculation of the fee is in accordance with 67-1205. Under subsection (D), the Commissioner has the option to amend, sign and return the order and if the attorney(s) disagree(s) with the amended Order, may file a motion with the Judicial Department and the motion may be heard according to Rule 67-215 unless the motion requests a hearing to present testimony or evidence.

Most importantly to this Declaratory Judgment action subsection (F) provides that if the Form 61 and Order do not comply with Rule 67-1205, the:

"Commissioner reviewing the Form 61 and Order shall immediately schedule a hearing to consider argument of counsel and testimony, if any." (emp. added).

Further, Regulation 67-1205 provides for a contingency fee in general of 33.3% and provides for determining a reasonable fee in certain situations. Subsection (C)(3), provides that the attorney may request a fee from past due compensation but thereafter during the payment of temporary compensation, the attorney may not charge a fee from such temporary compensation. The Regulation then specifically provides that:

"If the attorney secured the payment of permanent disability later, the attorney may charge, according to these regulations, up to but not more than 33.3% of the settlement or award."

28. That in interpreting when temporary compensation benefits transition to an "Award" of permanent compensation benefits, then Judge Hearn, now Justice Hearn wrote in Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (S.C. App. 1999), and held that,

"essentially workers' compensation benefits accrue along a time continuum: TTD (Temporary Total Disability) benefits are available from the date of injury through the date of MMI and post-MMI benefits may be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member".

Justice Hearn cited to and as support of that proposition/ decision the cases of Smith v. South Carolina Department of Mental Health, 329 S.C. 485, 495, 494, S.C.2d 630, 635 (S.C. App. 1997) and O'Bannon v. Westinghouse, 319 S.C. 24, 27-8, 459 S.E.2d 324, 326 (S.C. App. 1995).

29. That in accordance with the statutes, Regulations and case law, the Fee Petition submitted on December 8th, set forth the date that the Hearing Commissioner had determined that the Claimant reached maximum medical improvement at which time the "Award" of the Commission became a permanent "Award" and the entitlement to the fee of the attorneys of one-third (1/3) attached and was based on the value of the total and permanent

disability "Award" made as of that date; which is in accordance with the statute, the Regulations of the Commission and the case law as set forth hereinabove. The Hearing Commissioner's Decision (a lay Commissioner not trained in the law in this case), must be based upon his review of the facts and law as presented to the Commissioner based on and in the Record only as the Judicial Officer hearing the case. The only exception as to the law being under Judicial Cannons applicable to the Commission (S.C. Code §42-3-250) unless parties are advised that the Commissioner is considering outside legal opinion. Over three (3) months after the Fee Petition was submitted and six (6) weeks after a hearing, in violation of the statutes and Regulations as set forth hereinabove, the Commissioner stated, based upon a contrary "legal" opinion and awarded a fee based only on the value of the "Award" as of the date that it was affirmed by the Full Commission. That Full Commission Decision was entered, only after the Defendants stopped further appeal over one (1) year after the permanent "Award" had been made on October 12, 2016. As argued to the Commissioner in repeated letters, emails and verbally to the Commission(er) at hearing(s), under that reasoning which is contrary to statute, regulation and case law, an attorney representing the Claimant, if the Defendants decide to appeal the permanent disability "Award" made by the Commission all the way to the Supreme Court

and that original "Award" is ultimately affirmed when the Defendants decide to stop appealing, the Claimant's attorney(s) would only be entitled to an award of attorney fee's as of that date. This Court may take judicial notice in reviewing this situation that where a case is appealed all the way to the Supreme Court, that that process may take as long as three to five (3-5) or six (6) years or more for a final decision to be rendered.

30. That under the South Carolina Workers' Compensation Act, there is actually no statutory provisions specifically addressing the rights of an attorney where the fee is not approved in reference to an appeal or how the matter is to be reviewed. S.C. Code §42-15-90 simply provides that not only may the Commission approve an attorneys fee request but that any Court of, "competent jurisdiction" may approve an attorneys fee request and this Court is the Court of general jurisdiction and is the Court of competent jurisdiction under the Act. S.C. Code §42-17-70. In addition, in reference to whether or not the attorney has a right to appeal a Decision made, there is no section of the Act that addresses that. S.C. Code §42-17-50 only provides for an application for review of an "Award" by the Commission and provides for review by the Full Commission of that Award. In fact, the Regulations in reference to appeals, Rule 67-701, provides that the party appealing is required to

serve the opposing party under Rule 67-211 wherein Rule 211 only refers to service on a claimant or the employer, or their representatives. In this case and in any fee dispute as to approval or non-approval by the Commission, the opposing party to the attorney(s') request is the Commission and the only other party in interest would be the attorney(s') client, the injured worker or dependents.

In this case, the Hearing Notices, for both the hearings before the Commissioner and the Full Commission, were served in addition to the Claimant and Plaintiffs inappropriately on the Defendants as a party. After notice of this inappropriate service and request for an Opinion about service of a Request for Commission Review, the Commission gave no guidance as to whether or not the Defendants were to be served. Plaintiffs would submit the Defendants' involvement, had they appeared and took a position would be and is actually an interference with a contract between the Claimant and the Claimant's attorney(s) and the statutory responsibility of the Commission to review and approve the attorneys Fee Petition based on that private confidential contract. That contract is subject to the attorney-client privilege except for the Commission only, Rule 407, Rule 1.6(b)(7), SCACR. The Defendants are not a party to either the contract or the request for approval of attorney fees

nor a party to the appeal of the denial of any of the attorneys' fees requested.

31. That subsequent to the March 6th Order of the Hearing Commissioner, the Plaintiffs notified the Commission through the Judicial Director and General Counsel of the discrepancies in the Statutes and the Regulations and requested notice and information on how to proceed based on a refusal to approve attorneys' fees by the Hearing Commissioner. After going over no reference to appeal in the statutes and/or Regulations in this situation and after going over who is to be served, the Plaintiffs asked the specific questions in reference to an opinion on how to proceed: "who is served?"

"So, do I file a motion for a hearing or should I file an appeal?"

"For safety's sake, unless I hear from you, I am going to draft a Form 30 appeal and serve it on my client ... I will go ahead and file that appeal if I haven't heard from you by the 20th".

"Also, I am going to draft/file some type of declaratory judgment action in Circuit Court to obtain discovery and to have a judicial determination made as to whether our fee requested is in accordance with statute, regulation and case law."

Having heard nothing from the Request (Petition) for an interpretation of the Regulations and Statutes from the Commission on March 20th a provisional Notice of Appeal was served, the cover letter (and Notice of Appeal) was captioned:

"RE: Preston F. McDaniel and John M. Milling RE:
Attorneys Fee Order in RE: Pamela O. Cartee vs. S.C.
Judicial Department
WCC File No.: 1307922"

"Please note I have not received a response from
General Counsel for the Commission concerning the
statutory authority for a Commission Review or as to
the ethical and legal implications concerning this
situation and would request that this Request for
Review be held until a response is filed or counsel
is advised in writing, no response will be
forthcoming or for a period of thirty (30) days,
whichever comes first."

On March 23rd, the Plaintiffs again wrote General Counsel for
the Commission requesting a, "written reply concerning the
ethics issues in reference to the Regulation (note: Statute)
requirement ..." specifically in reference to the parties to be
served and conflicts in the Regulatory and Statutory requirement
and ethics concerns and particularly as to Regulation which if
interpreted to require, " ... service on the Defendants in an
appeal over an attorney fee dispute places any lawyer in an
ethical bind." The request also discussed the possibility of
obtaining an Ethics Opinion to help all of the attorneys
involved out. The letter also again placed the Commission on
notice of the intent to file a Declaratory Judgment action to
have a legal interpretation made of the application Regulations,
statutes and case law in reference to all of these issues.

32. That subsequent thereto as set forth hereinabove, the
Plaintiffs filed a Declaratory Judgment action and a Stay

without Notice was granted on April 17th, 2018. At a hearing subsequent thereto, the Stay without Notice was allowed to dissolve with the specific intent and purpose of the Circuit Court to allow for a decision by the Full Commission in hopes of resolving all of the issues involved in reference to the attorneys' fees. [Such resolution would not resolve all of the issues or any of the issues in reference to an interpretation of the legal rights of the Plaintiffs and a declaration of rights of the Plaintiffs as to the statutes and Regulations as to whether or not the Plaintiffs have a right to appeal before or after filing a motion for review and/or as to the parties to the appeal in compliance with the Regulations and statutes as written.]

33. That the Plaintiffs would submit that the evidence will establish that before, during and after filing the Request for Commission Review with the Full Commission for Full Commission Review of the Decision of the Hearing Commissioner, the Plaintiffs were not placed on notice of any involvement of any Legal Counsel or opinion, nor were provided in writing or otherwise with any additional case law, statutory interpretation or Regulatory interpretation as to any of the issues involving the approval or disapproval of the attorneys' Fee Petition and/or as to the proper process to be followed and/or as to whether or not the Regulations of the Commission and Statutes

had been complied with in reference to the approval or non-approval of the attorneys' fees request made in this case. The Record before the Full Commission will show that the Plaintiffs filed a Brief and no other Brief or Memorandum was submitted by any party or attorney and that the Record before the Full Commission consisted of the Record before the Hearing Commissioner and their Brief. The Record before Full Commission in addition consisted of the Oral Argument made by the Plaintiffs and again the Record before the Hearing Commissioner and no contrary oral argument was made by any lawyer in reference to the issues before the Commission.

34. That subsequent to the hearing held on May 21st before the Full Commission, an Order was issued by the Full Commission on May 30th, 2018 which was served on May 30th, 2018 by the Judicial Department by email only which order consisted of twenty (20) pages, twenty-two (22) Findings of Fact and twenty-nine (29) Conclusions of Law. The Hearing Commissioner's Order consisted of two (2) pages and had four (4) combined Findings of Fact and Conclusions of Law.

On May 31st, the Plaintiffs wrote the Judicial Department notifying them they intended to file a Petition for Rehearing within thirty (30) days and requesting a revised Order and service noting that: the Order did not note the appearances of the Plaintiff, John M. Milling, Esquire and did not list him as

one of the party Petitioners/Appellants before the Full Commission or a party to the Order; noting that Mr. Milling had not been served in any way, shape or fashion with the Order; requesting a copy of the Vote Sheets; and requesting a copy of the Commission Policy and/or written request from the Hearing Commissioner concerning the matter being set en banc. The evidence will establish that subsequent thereto on June 1st, the Judicial Director advised that Mr. Milling was not served with a copy of the Order because he was neither a party to the Fee Petition initially filed nor to the March 20th Form 30 Request for Commission Review. A copy of the Vote Sheets pursuant to the request were attached and the Judicial Director notified the Plaintiffs that as to the Commission Policy concerning Fee Disputes being heard en banc and as to Commissioner McCaskill's written request for an en banc hearing, that the Commission had never adopted its Policy in writing, and that Commissioner McCaskill made his request verbally. The evidence will establish that prior to that notification the Plaintiffs had been advised that the Hearing Commissioner had not made a request for en banc review.

The evidence will establish that the Vote Sheets confirm that four (4) Commissioners voted simply and only to "affirm" the Decision of the Hearing Commissioner without any notation of any additional Findings of Fact or Conclusions of Law. Two

Commissioners voted to affirm in part and reverse in part and noted that a separate written Opinion would be filed. The Vote Sheet of Commissioner T. Scott Beck noted a vote to "affirm" the Decision but also that the Order was assigned to be written by, "Commissioner: Beck" and "Attorney: Roberts". The law requires that the Commission Decision must be based strictly and purely on the Record; that the parties must be notified of any additional evidence or legal opinion sought both as a matter of law, due process of law, and in accordance with Judicial Ethics; and the Commission must comply with its own Regulations as well as the statutory law.

Commission Regulation 67-709(B) (1) provides that the Hearing Commissioner may request a review by the other six (6) Commissioners commonly referred to as an en banc hearing. Reg. 67-709(E) (2) concerning where the Commission upon review of the Hearing Commissioner's Findings of Fact and Conclusions of Law agree to modify the Order of the Hearing Commissioner that they must,

"The Commissioners, together shall agree on a modification if any and record their Findings of Fact and Conclusions of Law on a Vote Sheet."

Reg. 67-701(A) (5) provides for the filing and proof of service of a Form 30 on the "parties". Reg. 67-704 concerns notice of the review hearing and provides for it to be served on all "parties" for the review. Reg. 67-705 provides for the

filing of a Brief by the Appellant and the Respondent and subsection (E) provides that:

"No further Briefs are permitted unless requested by the Commission."

The evidence will establish there was no notification of the Plaintiffs of any request for any additional Brief by the Commission in this matter and subsection (H) requires that any Brief is to be filed and served at least five (5) days before the scheduled hearing date. The Defendants were served with notice of the hearing.

35. That S.C. Code §42-17-60 in reference to Full Commission Decisions requires that,

"within thirty days from the date of the Award or within thirty days after receipt of notice to be sent by registered mail of the Award, but not thereafter, whichever is the longest may appeal the Decision of the Commission to the Court of Appeals."

The Plaintiffs had noted that Mr. Milling as a Plaintiff and as an Appellant and as an Attorney of Record for the Claimant filing the initial attorneys' Fee Petition had not been served with the Order, and further requested service of a copy of the Order by registered mail which by statute would extend the time for Commission review. It is required and allowed by statute.

S.C. Code §1-23-350 requires that the parties shall be notified,

"either personally or by mail of any Decision or Order. Upon request a copy of the Decision or order

shall be delivered or mailed forthwith to each party and to his attorney of record."

The evidence will establish not only that Plaintiff John M. Milling, Esquire was not served at all but will establish that as requested a copy of the Commission Decision has never been received by registered mail nor after request has been personally delivered or has it been mailed to the parties under S.C. Code §1-23-350.

36. That subsequent to the Decision of the Full Commission, a Notice of Motion and Motion to file amended and supplemental pleadings and for a Stay and Temporary Restraining Order was filed with this Court on June 25th attaching the Petition for Rehearing that was filed that day with the Commission. A copy of the Motion for Rehearing that was filed with this Court included a cover letter noting that although the Plaintiffs had not been properly served, that they were filing the Motion for Rehearing and again requesting a revised Order and service of the Order in accordance with statute. On June 27th, this Court issued a Stay. The evidence will show that by letter dated June 26th the original Motion for Rehearing that was filed June 27, 2018 with the Commission (note: the letter dated prior to the time that the Motion was filed with the Commission), the Motion was returned via that letter on June 28, 2018. The letter contained no Order of the Commission dismissing the Motion for

Rehearing or any Order of the Commission whereas the Judicial authority of the Commission lies by statute only with the Commission. S.C. Code §42-3-20. Without Order, the letter stated the Motion was returned as having been untimely filed due to a new Regulation that went into effect June 23, 2018.

S.C. Code §42-17-60 allows for appeal within thirty (30) days of the date of the final Decision as properly served by the provisions of the statute. S.C. Code §1-23-380 provides that an appeal may be filed within thirty (30) days of the final agency Decision or within thirty (30) days where a Petition for Rehearing has been filed after a Decision on the Petition for Rehearing. The evidence and law will establish that the Commission's jurisdiction and authority is limited to that provided by statute, and there is no statute within the Workers' Compensation Act or law that would allow the Commission to establish a shorter period of time for the filing of a Petition for Rehearing shorter than thirty (30) days. In addition, the thirty (30) day appellate time runs from the time of the final Decision on the Motion for Rehearing which the evidence will show in this case, assuming the letter is a decision by the Commission, was made no earlier than the receipt by mail on June 28th; again at which time there was no Order of the Commission actually dismissing the Petition for Rehearing as being untimely included as is required by law.

WHEREFORE, the Plaintiffs would respectfully request and pray for the following declaration of rights and relief:

1. Issuing an Order after review of the Complaint as amended and supplemented and review of the Answer of the Commission, ordering discovery and/or a Remand pursuant to S.C. Code §1-23-380(4) for and setting a Scheduling Order for the discovery to include Subpoenas and depositions necessary to properly present evidence to the Court especially as to irregular procedures not in the Record and as to whether or not the various statutes, Regulations and Rules of the State of South Carolina were complied with in the processing of this request for approval of attorneys' fees as submitted to the Commission in accordance with law, and particularly as to whether or not those were in excess of the statutory authority of the agency; whether or not there was unlawful procedure involved; whether or not there was violation of constitutional and statutory provisions; whether or not the decisions involved were effected by other errors of law; and whether or not the actions were arbitrary and capricious and whether or not the decisions made were based on the Record before the Commission.

2. As originally set out in the original Complaint, issuing a legal opinion and declaration under a review of the statutes, regulations and case law as applied to the final

permanent "Award" made by the Hearing Commissioner in this matter; declaring that the fee as requested is in accordance with the statutes, regulations and case law applicable to a final permanent "Award" which in this case set forth a date of maximum medical improvement, and on which date made an "Award" of total and permanent disability and an entitlement to the residual value of compensation benefits for that total and permanent disability "Award" as of that date under a 500-week award.

3. Finding based upon a review of the statutes, Regulations and case law that the Commissioner assigned to review the Plaintiffs' Fee Petition committed errors of law and violated the Regulations by failing to immediately approve or set a hearing on the Attorney Fee Petition as submitted to the Commission for approval on December 8, 2017.

4. Finding whether or not there was compliance with all the Regulations and statutes and case law in reference to the process, both before, during and after the Decision by the Hearing Commissioner and particularly as to the "parties" involved, and to the process as not reflected in the Record, finding whether or not there was compliance with the Rules, Regulations and statutory law of the State of South Carolina, and the Rules of Court in reference to the processing and determination as to whether or not Plaintiffs should have filed

an appeal versus filing a Motion with or without an appeal to follow, and finding whether or not the Commission complied with the dictates of S.C. Code §1-23-150 in reference to the Request/Petition for a declaration of the applicability of any of the appeal Regulations of the Commission in this situation, and as to the authority of the agency to promulgate a particular Regulation, and as to the appellate process including the Briefs, notice of the parties, the parties involved, and whether or not any outside legal opinion was obtained, and further compliance prior to the Decision of the Full Commission.

5. A finding and declaration as to whether or not the Rules and Regulations of the Commission, the statutes of the State of South Carolina, and the Decisions of the SC Supreme Court and Court of Appeals have been complied with in reference to the actual Decision of the Full Commission, and particularly as to the Decision being contrary to the Vote Sheets, and being issued and including legal arguments and precedents not submitted to the Commission for decision as set forth in the Record, and containing facts and law outside of the Record in violation of the statutes of the State of South Carolina and the Regulations of the Commission, and in failing to properly serve all parties involved, improperly captioning as to the parties involved, and failing to properly serve and refusing to properly serve the Decision of the Full Commission in accordance with

law, and in a total failure to comply with the Rules, Regulations and statutory law of the State of South Carolina in the issuance and service of the Decision of the Full Commission in this matter; and subsequent to the filing and improper service of the Decision in this matter, failing to comply with the statutory law of the State of South Carolina and the Regulations in reference to the Petition for Rehearing, and the judicial authority of the Workers' Compensation Commission, particularly as to the failure of the Commission to file an Order as to the basis of the refusal to consider the Petition for Rehearing.

6. For a declaration as to whether or not the process and the decisions of the Workers' Compensation Commission in this case are in violation of the Constitution of the State of South Carolina by:

A. denying the Plaintiffs due process of law by failing to be placed on notice of the issues to be addressed or right of confrontation of and to respond to their accusers;

B. denying them equal protection of the law in reference to the new interpretation of this Regulation as being contrary to the interpretation as has been given the word "Award" under statute and by the Commission which is uncontested in the Record since 1991 in reference to the Fee Petition that

was submitted in this case, which was in accordance with law, statutes, Regulations and case law;

C. violate the Plaintiffs' constitutional right to freedom of contract where the contract is in accordance;

D. violate and infringe on the Plaintiff's constitutional right to freedom of contract where the Regulations in reference to a contingency contract and the approval requirement exceed and limit such contract beyond in reference to a contingency contract found in the Act. S.C. Code §42-1-560 limits a contingency fee to 1/3rd of the amount recovered;

E. whether or not the Commission Regulations were properly adopted in accordance with State Law and as to whether or not those Regulations exceed the ethics requirements for fees under the SC Code of Ethics for attorneys and have a chilling effect on the right to representation of Counsel and also violate the right to contract under the SC Constitution; and

For such other and further relief, and for attorney's fees and costs as the Court deems appropriate in reference to this Complaint.

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

And

John M. Milling
MILLING LAW OFFICE
88 Public Square
Darlington, SC 29532
(843)393-4083

Plaintiffs

August 24, 2018

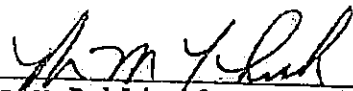
STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

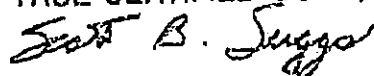
VERIFICATION

PRESTON F. McDANIEL, being duly sworn, says that he is one of the Plaintiffs herein, and has read the foregoing AMENDED AND SUPPLEMENTAL COMPLAINT and knows the contents thereof, that the same is true of his own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters he believes them to be true. This Verification is made pursuant to SCRCF Rule 11(c) and the requirements of Rule 65(b).


Preston F. McDaniel
Plaintiff

SWORN TO BEFORE ME this
24TH day of August, 2018.


Notary Public for South Carolina (L.S.)
My Commission Expires: 2/4/24

TRUE CERTIFIED COPY,

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

FILED
2018 AUG 28 AM 11:12
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1307922

PAMELA O. CARTEE,	)	
	)	
CLAIMANT,	)	
	)	
VS.	)	TRANSCRIPT OF PROCEEDINGS
	)	
SC JUDICIAL DEPARTMENT,	)	FEBRUARY 12, 2018
	)	
EMPLOYER,	)	
	)	
AND	)	
	)	
STATE ACCIDENT FUND,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

THIS HEARING WAS HELD BEFORE
COMMISSIONER GENE MCCASKILL, REPORTED BY SKYLET KEAN,
COURT REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE
OF SOUTH CAROLINA; SAID PROCEEDINGS WERE HELD AT THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION,
1331 MAIN STREET, COLUMBIA, SOUTH CAROLINA, ON
MONDAY, FEBRUARY 12, 2018, COMMENCING AT 10:05 A.M.

SKYLET KEAN (803) 609-0134
fttpam@aol.com

1 APPEARANCES

2

3 FOR THE CLAIMANT:

4 PRESTON F. MCDANIEL, ESQUIRE

5 THE MCDANIEL LAW FIRM

6 1315 ELMWOOD AVENUE

7 COLUMBIA, SOUTH CAROLINA 29201

8

9 FOR THE DEFENDANTS:

10 NO APPEARANCE

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PROCEEDINGS

THE COURT: Today's date is February 12th, 2018. This is Workers' Compensation Commission file No. 1307922. This case is Pamela O. Cartee versus the South Carolina Judicial Department and the State Accident Fund. Ms. Cartee is represented by Preston F. McDaniel and also by John M. Milling. The employer and carrier are represented by Sarah Sutusky.

We have had a hearing in this matter and I actually heard this case and awarded Ms. Cartee permanent and total disability. We are here today on a dispute over attorneys' fees. Mr. McDaniel has submitted a 61 requesting attorneys' fees and costs in the amount of -- Preston, I'm just writing this down and I don't remember where I copied it a little while ago. 73,354.35?

MR. MCDANIEL: 73,094.45.

THE COURT: 73,094.45?

MR. MCDANIEL: Forty-five.

THE COURT: All right. And I've reviewed that petition and have already approved 59,632.69. So really what we're here over today is the delta between those two numbers?

1 MR. MCDANIEL: Correct. Correct,
2 Commissioner.

3 THE COURT: And Mr. McDaniel, hold on just
4 one second. Let me make sure. Let's go off the
5 record for just a second.

6 (OFF THE RECORD.)

7 THE COURT: Let's go back on the record.
8 As I say, we're here today over the delta between the
9 amount that I have approved to date and the amount
10 requested. So Mr. McDaniel, if you would, please,
11 sir, give me your argument as to your entitlement to
12 the delta.

13 MR. MCDANIEL: Commissioner, I've got a
14 stack of documents, and if you want to, I'll be glad
15 to be put under oath just to make my comments --

16 THE COURT: You're an officer of the
17 Court, sir.

18 MR. MCDANIEL: Okay. The 42 years that
19 I've been practicing law, this the first time I've
20 ever had a fee contested. And I would likely note
21 for the record in particular, I don't know if you saw
22 the letter from Pam Cartee.

23 THE COURT: I have.

24 MR. MCDANIEL: And Pam Cartee is a
25 wonderful person and Judge Milling and I were proud

1 to represent her and she's most appreciative. Like I
2 said, the first time -- I've had two calls from
3 Commissioners in the past in reference to a fee and
4 one was just simply -- it was a very weird situation
5 and all he asked me to do was he said, Preston, would
6 you mind write me explanation because you represented
7 the mother of two kids everybody agreed to and you
8 increased the compensation rate by \$200 a week when
9 you got involved. And the contest was over that they
10 didn't want to pay the mother. They wanted to pay
11 the two kids their half, but they didn't want to pay
12 the mother's half. And so would you just mind send
13 me an explanation of how you got to the fee which I
14 did. But outside of that, I've never had -- I've
15 never contested. I'll say probably I was more hurt
16 by this situation than anything else.

17 But anyway, I would submit to you,
18 Commissioner, I've got a stack of documents. We
19 tried to stay in regular communication from the time
20 that the fee petition was submitted. A new paralegal
21 submitted the fee petition. And I noted one thing on
22 it on the bottom, the fee -- the 61 is written weird
23 in that it says what the claimant will receive.

24 You know, everybody struggles with should
25 we put in there, you know, what's the final amount or

1 what is the total amount that the claimant received.
2 And in this case we recorded -- and I do an
3 explanation. I don't know if you notice or not, but
4 my fee petition -- my itemized disbursement statement
5 was used by the Commissioners back 1990s as the
6 example to be passed around to the entire bar for
7 disbursement statements for when we started after we
8 passed the regulations. And I have always felt
9 like -- I've always done an itemized disbursement
10 statement to my clients. But, however, mine was used
11 as an example. And I try to be as fully explanatory
12 as I can on there and would submit that. And I'll be
13 glad to pass these up and make them part of the
14 record. A lot of them are at the appropriate time.

15 But basically the defendants after the
16 award was made drug this case out for a long time.
17 As you know, they drug it out a long time before the
18 final award was made. And in the final award you
19 found that she had -- that Pam had reached maximum
20 medical improvement on October 2nd -- I mean, 12th of
21 2016. The final award was not entered until
22 April 13th of 2017 which they appealed to the Full
23 Commission and the Full Commission award did not come
24 out until October 17th.

25 So we have from the date of maximum

1 medical improvement and from the date of the award.
2 And then, of course, you can see October 17th is a
3 Full Commission date. They didn't pay us until after
4 the 30 days had run to the supreme court. I
5 didn't -- we just let it go because the State
6 Accident Fund finally paid us the commuted value.
7 They should have paid us the 10 percent penalty, but
8 we didn't raise that. We just let it ride.

9 But, however, my fee petition or the fee
10 petition of Mr. Milling and I, which I do an
11 itemized -- I always explain to a client. I want
12 them to understand. And so I did an itemized letter
13 to Pam explaining what the fee and how it was in
14 accordance with the regulations and all that. And
15 I'm going to pass up -- I know you've got the book,
16 but I'm just going to pass up the regulation.
17 Actually, an attorney can charge up to 33 percent of
18 the entire compensation awarded or the settlement.

19 But under (C) which is applicable in this
20 case under, under (C) if you obtain an award, if you
21 get temporary total in place, then after that -- it
22 says after you're entitled to -- an attorney secures
23 payment of permanent disability later, the attorney
24 may charge, according to these regulations, up to no
25 more than 33 percent of the settlement or award. And

1 in this case it was an award by Your Honor.

2 As you know in reference to any permanent
3 partial disability award in reference to the leg or
4 it's the date of maximum medical improvement. It's
5 when things transition from temporary total
6 disability to permanent disability.

7 I've got a copy of the case law on that
8 just for Your Honor's edification, but that has
9 always been the way that we have calculated our fees
10 in a case. And accordance with like I said for 42 --
11 I've been practicing before the Commission since
12 1984. So, Skylet, how long is that? Thirty-six
13 years. But claimants' attorneys have always
14 calculated our fee based on the date of when it
15 transitions from temporary total, or other words,
16 maximum medical improvement. Sometimes the
17 Commissioners don't make a decision on maximum
18 medical improvement and just date it from the date of
19 the -- you know, the date of the award. But,
20 however, in this case that's become such a magical
21 term.

22 Matter of act, the State Accident Fund is
23 the only group that I know of that has raised, well,
24 we don't have a statement of maximum medical
25 improvement, Commissioner. I think you and I have

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1 heard that a couple of times that delayed hearings
2 and settlements and everything else. Because even
3 though the doctor said the person is totally and
4 permanently disabled and they didn't use those
5 medical words maximum medical improvement.

6 But, however, that's the way we've always
7 calculated. That's what the law provides for and the
8 regulations are in accord with that which is from the
9 date of the award. The award in this case was from
10 October 12th. And on my itemized disbursement
11 statement...

12 Another thing, too, I want to point out.
13 When I got involved in Pam's case they were paying
14 her \$426 a week and said that that's what she was
15 entitled to based on her salary. I immediately
16 looked at it and said, well, you know, they're not
17 including everything that the court reporters get in.
18 And I got a copy of and they then -- one of the few
19 things they agreed to was after mediation they
20 agreed, okay, we'll increase the compensation rate to
21 \$698, the maximum compensation rate. So for a period
22 of 500 weeks Pam got the maximum compensation rate
23 increased from over \$246 whatever it was over \$200.
24 So in other words, based on our representation alone
25 we increased her compensation by \$100,000. Now, of

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1 course, we took some of that. We would have been
2 entitled to an award for all of that, but we only
3 took it at partial.

4 Now, the second thing is is that then on
5 the itemized disbursement statement we listed the
6 date of -- we listed the final payment on there as
7 what was going to be disbursed at that time which was
8 \$179,000. But when you combine the payments after
9 the award from the date of the award which is the
10 date of maximum medical improvement through the day
11 that they finally paid us, Pam received over \$250,000
12 in compensation and we based our fee -- actually,
13 it's really funny. I based the fee on our estimation
14 of commuted value and that's why one little thing
15 reads funny in the disbursement statement in that I
16 say that we were actually entitled to a fee of
17 \$73,427.78, but we only request \$73,094.45.

18 Because when the State Accident Fund
19 calculated it and Sarah Sutusky calculated, they came
20 back more than I had calculated. But we had already
21 submitted so that's -- John and I -- I told John and
22 John had that. They aren't here today. Pam would
23 have been glad to be here, but they're both actually
24 out of town on vacation. Pam is with her husband and
25 John's out of town on vacation, too. He's sort of

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1 slowing back.

2 But the 73,000 is based on the value of
3 the award at the time it was made. And I set that
4 out in the thing. When you add in the 59 weeks of
5 paid under the award after the date of maximum
6 medical improvement through the date that we were
7 paid and then you add that to the amount, the
8 residual lump sum that they paid us, then that was
9 the basis for the fee which is in accordance with the
10 regulation and the statute and case law.

11 And in addition to that -- and we took
12 nothing else in reference to -- Pam is a wonderful
13 lady. She didn't deserve to be treated like she did.
14 It was an honor representing her. I think -- you
15 know, I told her in a private email that when she
16 wrote her letter which I did not ask her to write.
17 She stated that -- you know, I told her it brought
18 tears to my eyes. You know, there are a lot of
19 lawyers out there have made a lot more money than me
20 and I always say -- it's really funny. But my law
21 clerks have got more money than I have. But I tell
22 one thing, I sleep -- I sleep well at night. And,
23 you know, sometimes I'm not the most favorite person
24 over here particularly lately, but I will not -- I
25 will not back off from anybody in defense of my

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1 client. These injured workers have had their lives
2 destroyed and I will do everything I can for them. I
3 have never requested one dime which I was not
4 entitled. And I like I said, I think I was -- I'm
5 more hurt by this than anything else. Anyway, the
6 thought that somebody would think that I would charge
7 the claimant is -- hurts me to my core.

8 That's my case, Commissioner. I'll be
9 glad to hand these documents up. If you've got any
10 questions, I'll be glad to answer them.

11 THE COURT: If you want to hand those up
12 and we'll let Skylet just mark those as an exhibit.

13 (CLAIMANT'S EXHIBIT NUMBER 1 WAS MARKED FOR
14 IDENTIFICATION.)

15 MR. MCDANIEL: While these were in the
16 record, a lot of those are the emails between Kellie
17 and -- another thing, too, not in your defense but in
18 Kellie's, this all happened at Christmastime when
19 we're all trying to -- I always say that all the
20 lawyers, the Commission and everybody else out there
21 is trying to do too much work in three weeks.
22 Because, really, you take Thanksgiving. You take the
23 two weeks around Thanksgiving. It's dead. Then
24 you've got really two weeks before everybody starts
25 taking off for Christmas. So the last two weeks of

1 Christmas. So you really got three or four weeks
2 that you're trying to do too much work in. Everybody
3 is trying the end of the day. Everybody is trying to
4 get in everything paid, the tax at the end of the
5 year and all that kind of stuff and all the claimants
6 are trying to get the money before Christmas. And,
7 of course, that's a Godsend in and of itself that we
8 can just submit them where they're represented by an
9 attorney is approved as soon as it's stamped in. We
10 hand-walk a lot of stuff over. I actually hand-walk
11 some stuff over from lawyers around the state.
12 They'll send stuff in. We'll bring it over.

13 But, anyway. But, you know, all this
14 happened during that time and we all have personal
15 things going on, you know, that we don't know about.
16 Anyway, I have nothing else. Commissioner, I'll be
17 glad to answer any questions that you've got.

18 THE COURT: I don't have any questions for
19 you. Mr. McDaniel, I want you to know from my
20 perspective that this is not a matter of me thinking
21 that you are trying to request something that I don't
22 think you're entitled to under anything other than
23 I've just got to in my review of the law. What I've
24 approved is what I felt at the time you were
25 entitled. But I want to take what you've told me

1 today and what you've handed up and look at it again
2 to see if there is a misinterpretation on my part or
3 something I have missed. But I want to assure you it
4 is absolutely nothing personal in this on my part at
5 all.

6 MR. MCDANIEL: I didn't mean to imply it
7 was personal.

8 THE COURT: And you didn't. I just want
9 to make sure that you understand that. I have great
10 respect for you and am always happy to see you every
11 time you come.

12 MR. MCDANIEL: You know, it can be -- in
13 other words, it was personal to me. Not just --

14 THE COURT: Well, I understand that. But
15 I would hope you wouldn't feel that way.

16 MR. MCDANIEL: By the way, Commissioner, I
17 want to note one thing, too. Also, it looked like to
18 me that you based the fee at the time that the -- out
19 of the amount of the final award which was only made
20 after they -- and so what we would be saying would
21 be, okay, a claimant's lawyer represents his client
22 and sustains the case on appeal, but he's not
23 entitled to -- he's entitled to a lesser amount.

24 Like I just -- the Clemmons decision.
25 Okay. For example, I've represented Tommy Clemmons

1 since 2012. I never got paid a dime until even after
2 tens of thousands of dollars of costs. You know,
3 I've got a case in the supreme court right now that
4 they've appealed all the way up to the supreme. I
5 won it all the way. I've never been paid a dime. I
6 represented that gentleman since 1999, you know.
7 And, you know, that will be saying, okay, well, you
8 obtained a total and permanent disability award where
9 they're only claiming wrist. They're only
10 responsible for that. And then they appealed that to
11 the Full Commission. They appealed that to the
12 circuit court or court of appeals now. And they
13 are -- you know, the claimant's attorney is now only
14 entitled to a third of the residual lump sum that
15 they pay them even though the claimant has benefited
16 from the attorney obtaining.

17 And I just note that because it looked
18 like that that's what the attorneys' fees was based
19 on was the award at the time of Full Commission
20 decision out of the final lump sum payment that was
21 made. But anyway, I just note that. I'll look
22 forward to hearing from you.

23 THE COURT: All right. Thank you so much.
24 That concludes this proceeding.

25 (WHEREUPON, THE HEARING WAS CONCLUDED AT 10:29 A.M.)

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF RICHLAND

5
6 I, SKYLET KEAN, COURT REPORTER AND NOTARY
7 PUBLIC, FOR THE STATE OF SOUTH CAROLINA, DO HEREBY
8 CERTIFY THAT SAID HEARING TRANSCRIPT IS A
9 STENOGRAPHIC REPORT AND WAS TRANSCRIBED THROUGH
10 COMPUTER-AIDED TRANSCRIPTION; THAT THE FOREGOING
11 TRANSCRIPT CONTAINS A TRUE RECORD OF SAID HEARING.
1213 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY
14 NOR COUNSEL FOR, NOR RELATED TO NOR EMPLOYED BY ANY
15 OF THE PARTIES CONNECTED TO THE ACTION, NOR AM I
16 FINANCIALLY INTERESTED IN THE ACTION.
1718 WITNESS MY HAND AT COLUMBIA, SOUTH CAROLINA,
19 THIS 19TH DAY OF FEBRUARY 2018.
20
2122
23 SKYLET KEAN, COURT REPORTER
24 NOTARY PUBLIC FOR THE STATE OF
25 SOUTH CAROLINA
MY COMMISSION EXPIRES: 07/30/2024SKYLET KEAN (803) 609-0134
fttpam@aol.com

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1307922

Pamela Cartee,)
)
 Claimant,)
)
 v.)
)
 SC Judicial Department,)
)
 Employer,)
)
 and)
)
 SAF,)
)
 Carrier/Defendant.)
 -----)

FULL COMMISSION HEARING

Monday, September 19, 2022
1:33 p.m. - 1:45 p.m.

The Full Commission Hearing was heard before Commissioners T. Scott Beck, Melody L. James and R. Michael Campbell, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 19th day of September, 2022, before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.



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1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

APPEARANCES

Preston F. McDaniel, Esquire
 McDaniel Law Firm
 1315 Elmwood Avenue
 Columbia, South Carolina 29201
 Pro Se

John M. Milling, Esquire
 Milling Law Firm
 2910 Devine Street
 Columbia, South Carolina 29205
 Pro Se

INDEX

<u>APPELLANT'S POSITION:</u>	<u>PAGE:</u>
MR. MCDANIEL	3
Certificate	13

EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 COURT REPORTER: This is Monday, September 19th,
2 2022. This is South Carolina Workers'
3 Compensation Case Number 1307922. This is the
4 case of Pamela Cartee, Claimant versus South
5 Carolina Judicial Department, Employer and SAF,
6 Carrier. This is an attorney fee dispute. The
7 appellants are Preston McDaniel and John
8 Milling. The Respondent is Pamela Cartee.
9 Each side is allowed 10 minutes for oral
10 argument and the appellant three minutes in
11 reply. You are requested to argue the grounds
12 of exception and stay within the record.

13 COMMISSIONER BECK: All right. Before we get
14 started, I'll note for the record that Ms.
15 Cartee was in fact served notice of this
16 proceeding and is not present here today. Mr.
17 McDaniel, you have 10 minutes, sir.

18 APPELLANT'S POSITION:

19 MR. MCDANIEL: And, Commissioner, before we gets
20 started if you don't mind, also it's Ashley --
21 our ex parte petition to ask for review by the
22 Commission of our -- the portion of the
23 attorney's fees that were not approved ---

24 COMMISSIONER BECK: Right. That's why I had him
25 mention that after he called ---



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1 MR. MCDANIEL: Right.

2 COMMISSIONER BECK: --- the caption.

3 MR. MCDANIEL: And by the way I already told the
4 attorney, I appreciate her notifying -- the new
5 staff attorney y'all have is quite some nice
6 lady. And she notified, of course, the other
7 defense lawyers, but they were not involved.
8 This has nothing -- and it's not really a fee
9 dispute. It's -- I would like to caption it as
10 a fee disagreement in reference to
11 interpretation. We're here to argue really one
12 question, but as I put in my petition for a
13 hearing I had a proposal. I think that having
14 read over and over again the original Full
15 Commission Decision as you recall, even out of
16 the four -- the seven -- the six Commissioners
17 that heard the appeal, four thought the date
18 should be one day and two thought the date
19 should be another day. And I think that just
20 points out that what I really think I hear the
21 current Commission saying is that just like in
22 a determination of maximum medical improvement
23 and a credit, you know, within the evidence
24 presented to you each one of you at every time
25 that issue comes up you hear a case, you make



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1 an award, and the defendants are entitled to a
2 credit or not entitled to a credit. You pick
3 various dates within the award to pick what
4 date on which that credit will apply.
5 Sometimes it's back to the date that the
6 defendants filed a 21. Like sometimes they'll
7 wait maybe a year and they'll file a 21, and
8 you'll date it back to then. Then there's
9 sometimes maybe three different dates by
10 doctors finding maximum medical improvement.
11 And you'll decide which one in your opinion as
12 the fact finder is the one that should apply in
13 reference to the date of maximum medical
14 improvement back to which the defendants get a
15 credit. Sometimes you decide that based on the
16 evidence presented to you the claimant has
17 requested a -- more medical attention, and you
18 decide that based on the facts presented to you
19 that day that they're not entitled to a credit.
20 But in your opinion he's reached maximum
21 medical improvement and you make the award
22 effective as of the date of that decision. So
23 I think from what I see and what I read, I
24 believe that the Commission is going to
25 exercise that same discretion. And so our fee



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1 petition was filed on the basis of our
2 understanding, and the same fee petitions that
3 I had filed for years, okay? And so if the
4 Commission wants to change its policy, there
5 are Supreme Court and Court of Appeals
6 decisions on this. I'm not going to quote it
7 to y'all, but I know y'all take me at my word
8 at that. That in other words if you decide
9 that you want to change the -- prospectively
10 the application of the fee petition, that you
11 need to give the parties notice of that. And
12 all that means to me is that, you know, from
13 now on you can exercise that discretion. And
14 what I would ask you to do, like I said, first
15 as a proposal is to do the same thing the
16 Supreme Court and Court of Appeals, Circuit
17 Court and this Commission I think on occasion,
18 but particularly the Supreme Court and Court of
19 Appeals do, they'll say, okay -- in reference
20 to emails they made this decision in the email
21 case. They said, okay well we understand
22 you're concept of notice and where they come
23 from, and you submitted this under that basis.
24 So we're gonna change it now prospectively.
25 But for this case we're gonna grant this



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1 appeal, or we're gonna allow this to go forward
2 or 'whatever it is. And I would ask you to
3 consider doing that in this case. In other
4 words if that is what y'all are truly saying at
5 your discretion to pick a date, that in some
6 cases yes it should be awarded back to the date
7 of maximum medical improvement. Other times it
8 should be awarded back to a certain date. At
9 times Commissioner James, I think Commissioner
10 Taylor said it should be to the date of the
11 Full Commission Award. All right. So you
12 know, because it would give -- it would allow
13 you the discretion I think is what you're
14 actually saying, what I hear you saying. Now
15 as to the actual fee petition we submitted I
16 would submit to you I have no idea where any
17 interpretation came from other than what I
18 submitted the fee petition on. The case law
19 provides that in reference to Workers'
20 Compensation in one of my cases actually in
21 1999 that the date of maximum medical
22 improvement is the date that the case
23 transitions from a temporary disability award
24 to a permanent disability award. So on the
25 date of maximum medical improvement the award



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1 the Commission makes, that is the date that
2 that permanency award attaches. That is
3 exactly in accordance with the regulation that
4 says that when an attorney obtains a permanent
5 disability award for the claimant, he is
6 attorneys fees is up to a third out of that
7 award. Now the question then becomes just like
8 credit issue, if you're gonna give credit back
9 you could only give credit back on the basis
10 that that's the date that the permanent
11 disability award attached. So I'm asking you
12 to -- you need to apply that same criteria to
13 the approval of attorneys' fees. That is also
14 directly in correlation with not only the
15 regulations, not only the case law, but it's
16 also in accordance with the Supreme Court
17 decision on when the award attaches. In Case
18 versus Hermitage Cottonelles, case actually
19 reviewed five or four different cases that had
20 come before the Supreme Court under various
21 factual scenarios. One factual scenario
22 involved the situation where the Com- --
23 Hearing Commissioner made the award and said
24 the award attached at this particular date.
25 And then that was appealed to the Full



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1 Commission, it was appealed to the Circuit
2 Court and on up to the Supreme Court. And the
3 Circuit Court ordered them immediately to pay
4 after the Full Commission award, they ordered
5 them to pay back to the date of the original
6 award by the Hearing Commissioner. Now another
7 case scenario was the Hearing Commissioner
8 denied the case but the Full Commission awarded
9 it. And in that case the Circuit Court ordered
10 them to pay back to the date that the Circ- --
11 the Commission, Full Commission attached the
12 award. And I think in that case, I'm not
13 totally sure about this, but if I remember
14 correctly the Full Commission actually awarded
15 months before the Full Commission hearing, and
16 the Full Commission award. And the Supreme
17 Court ordered -- in that case they affirmed
18 that they had to pay the back-due money in a
19 lump sum during the pendency of the appeal they
20 continued to make weekly payments during the
21 pendency of the appeal. Another one, both Full
22 Commission and the Circuit Court awarded.
23 There were four different scenarios. But the
24 basis of all that is to say that the Supreme
25 Court said that the date of the award that it



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1 attaches is the date upon which the award is
2 made. And so our fee petition was submitted on
3 that basis. I truly believe in looking back at
4 this there were two other factors that caused
5 us all to be here today. One was the Christmas
6 holidays. Our fee petition was submitted on
7 December the 9th right before the Christmas
8 holidays, and I believe that just with holidays
9 and all that I was not -- could not get to see
10 Commissioner McCaskill to see what kind of
11 questions he had. I believe firmly that had we
12 had an opportunity to talk as I have talked to
13 several of you in the past about if you had a
14 question on something I submitted. And you
15 approved it after you know, not me talking you
16 into it, but you know you understood what we
17 were doing. And you understood what the fee
18 was based on. The other thing is I had a
19 paralegal that was with me for about a year.
20 My chief paralegal had left me for a while and
21 then saw the wisdom of she needed to return.
22 But anyway it was during that time that this
23 young paralegal completed the fee petition.
24 And when she putting in -- when we put in the
25 weekly payments she actually put in TT paid



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1 from such and such. I filed an amended once I
2 caught it about a month or so later after
3 Commissioner McCaskill would not approve it.
4 I then went back and I filed the amended, which
5 y'all have, but showing that we were claiming
6 the fee from the date of the award in
7 accordance with the Supreme Court decision and
8 case law and the regulations. The only other
9 thing I would ask you to consider is -- well
10 not to consider, but is that -- I think that
11 everyone of you up here have approved fee
12 petitions for me in the past identical to the
13 one that's submitted in this case.

14 (Alarm goes off.)

15 **MR. MCDANIEL:** And so I'm just gonna shut up. I
16 really 'don't have anything else to say. If
17 y'all have any questions of me I'd really love
18 to hear them this time around and hope we can
19 work this out.

20 **COMMISSIONER BECK:** Any questions of Mr. McDaniel?
21 I don't have any.

22 **COMMISSIONER CAMPBELL:** I don't, no.

23 **COMMISSIONER BECK:** All right. That'll conclude
24 this proceeding. Thank you, sir.

25 (There being nothing further, the hearing concluded



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at 1:45 p.m.)

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**McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201**

*Proudly representing injured workers
for over 30 years.*

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

December 8, 2017

Deborah Backman, Claims Dept.
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

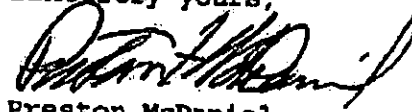
RE: Pamela Cartee v. SC Judicial Department
WCC # 1307922

Dear Debbie:

This is an Awarded case and after Appeal we requested and the State Accident Fund agreed to pay the residual balance and we have disbursed to my client.

Attached is the Form 61, 61A, the itemized Disbursement Statement and the Order approving attorney's fees and costs, along with the required number of copies for approval by Commissioner McCaskill and a self-addressed stamped envelope to return a copy to us. I have also attached a copy of the Award so that this matter may be forwarded to the Commissioner McCaskill for approval. I hope this is sufficient for filing this request for Approval of our Attorney Fees and Costs and I look forward to receiving Notice after Commissioner McCaskill's approval. If anything else is needed please let me know.

Sincerely yours,



Preston McDaniel
Attorney at Law

PFM/bmk
Enclosures

cc: John Milling

DISBURSEMENT STATEMENT

RE: Pamela Cartee v. SC Judicial Dept.
WCC File No. 1307922

I. Receipts:

Total Compensation Paid: \$339,771.44

Check #_1037482-Commuted Value 12/1/17 \$179,077.14

II. Attorney's fees, costs and disbursements:

Attorney's Fees: Preston F. McDaniel (\$73,094.45)
John Millings

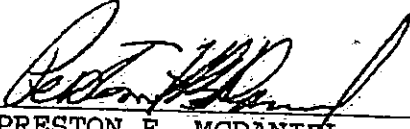
[Fee Based on Award PTD/MMI Date 10/12/16]
[TTD paid from 10/12/16 to]
[12/1/17= Approx 59 weeks x \$698.41/CR=]
[\$41,206.19; Commuted Value(12/1)=]
[\$179,077.14 + \$41,206.19= \$220,283.33]
[Total Value of PTD Award=\$220,283.33]
[Actual Fees =\$73,427.78]
[Requested =\$73,094.45]

Advanced Costs: Preston F. McDaniel:

Previously Reimbursed/Approved from Lump Sum
Of TTD Underpayment (Reimbursed)

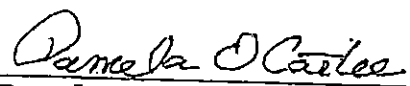
III. Net Proceeds to Client after disbursements: \$105,982.69

Reviewed and submitted by:


PRESTON F. MCDANIEL

Client certification and statement:

I hereby certify that I have received a copy of the Statement of Disbursements and that I have reviewed and understand the same. I further understand that any other outstanding costs and non-authorized medical expenses are my sole responsibility.


Pamela Cartee

Dated this 8th day of December, 2017

South Carolina Workers' Compensation Commission
1612 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723



WCC #: 1307922
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Pamela Cartee

Employer's Name: SC Judicial Department

Address: _____

Address: 1015 Sumter Street

City: Hartsville State: SC Zip: _____

City: Columbia State: SC Zip: 29201

Home Phone: () - Work Phone: () -

Insurance Carrier: _____

State
Accident
Fund

Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm

Preparer's Phone #: (803) 771 - 7211

Date Attorney Was Hired: 3/26/14

Date of Injury: 5/1/13

Compensation Rate: _____

Does this conclude the case? ☒ Yes ☐ No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

☒ **A.** R.67-1205C does not apply to the facts of this case. A 33 % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

☐ **B.** The subsection of R. 67-1205C applicable to this claim is (C) _____. A fee of \$ _____ is requested for approval based on the following:

Date of first impairment rating or offer of settlement: _____

Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____

Impairment Rating given and/or Settlement amount offered after date attorney hired: _____

Authorized Health Care Provider's Name: _____

☐ **C.** Admitted Death Claim - \$2,500.

☐ **D.** Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

Preston F. McDaniel
Attorney for the Claimant

12/8/17
Date

Summary

Total Amount of Compensation \$339,711.47

Attorney's Fee \$73,094.45 (Final Award)

Costs Reimbursed from 1st Award

Total Fees and Costs \$73,094.45

Client Will Receive \$105,982.69

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Pamela O Cartee
Client

December 8, 2017
Date

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

WCC Form # 61
Revised 7/08

61

ATTORNEY FEE PETITION

P249

South Carolina Workers' Compensation Commission
1333 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723



WCC# : **1307922**

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Pamela Cartee

Address:

City: Hartsville

State: SC

Zip:

Home Phone:

Work Phone:

Employer's Name: SC Judicial Department

Address: 1015 Sumter Street

City: Columbia

State: SC

Zip: 29201

Insurance Carrier: State Accident Fund

Preparer's Name: Preston F. McDaniel

Law Firm: McDaniel Law Firm

Preparer's Phone #: 803.771.7211

Please address the following factors in requesting attorney fee approval.

- (A) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly:
We represented Ms. Pam Cartee since before March 2014, when Mr. McDaniel was associated by John Milling to continue representation of Ms. Cartee. This is a contingency fee case and these subsections under the Rules concerning determining a reasonable fee do not apply. However, hundreds of hours have been spent on this case by the attorneys and staffs over the 3 & 3/4 years that we have represented Ms. Cartee. The results indicate the skill necessary to properly set this case up to obtain the benefits now and in the future for Ms. Cartee including the award for total and permanent disability with accompanied lifetime medical benefits for all casually related problems under the highly contested right to such care by local treating physicians.
- (B) The likelihood that the acceptance of this particular employment precluded other employment by the lawyer:
As to Mr. McDaniel this section does not apply as the Claimant's attorney practices almost exclusively in representing injured workers in workers' compensation cases. However Mr. Milling is a trial litigator and this case has interfered with his practice in reference to other litigation for his other clients.
- (C) The fee customarily charged in the locality for similar legal services:
The fee is in accordance with the customary fee charged in the area which is a 1/3 contingency fee plus costs and is subject to the contract entered into between the Claimant and the attorney(s).
- (D) The amount involved and the results obtained:
While this subsection does not apply to contingency fee contracts, see attached Disbursement Statement wherein the claimant's increased the claimant's compensation rate by almost \$300 and then obtained her an award for total and permanent disability with entire compensation value of over \$336,000. The fee request is only based on the value of total and permanent disability at the time that the claimant was determined to be entitled to PTD award and MMI.
- (E) The time limitations imposed by the client or by the circumstances:
Not applicable and no time limits were imposed by either the client or the circumstances.
- (F) The nature and the length of the professional relationship with the client:
We have represented Ms. Cartee as noted above for 3 & 3/4 years.
- (G) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
While this section does not apply since this is a contingency fee contract based on the customary charge in the locality. Mr. McDaniel and Mr. Milling have been practicing law for over 41 years and Mr. McDaniel has more Decisions in the SC Court of Appeals and the SC Supreme Court in the area of workers' compensation than any other single practicing lawyer. Mr. McDaniel is a past President of the SC Trial Lawyers Association and is past Officer and continuing Board Member of the IWA (F/K/A - SC Claimant Lawyer Association). Mr. Milling is a former Circuit Court Judge and trial litigator who has resided over hundreds of trials. Mr. McDaniel and Mr. Milling have represented thousands of people in workers' compensation matters and our reputations in workers' compensation and civil litigation speaks for itself.

(H). Whether the fee is fixed or contingent:

This is a contingency fee of 1/3 plus costs, which is in accordance with the customary charge for representation of an injured worker in workers' compensation matters and is pursuant to the Regulation.

See R.67-1205 and Rule 1.5(a) of the Rules of Professional Conduct, South Carolina Appellate Court Rule 407.

WCC Form # 61A

Revised 10/07

61A

**ATTORNEY FEE PETITION
SUPPLEMENTAL INFORMATION**

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

**PAMELA CARTEE,
EMPLOYEE/CLAIMANT**

vs.

**SOUTH CAROLINA JUDICIAL
DEPARTMENT**

and

**STATE ACCIDENT FUND
CARRIER/DEFENDANT**

**ORDER
APPROVING
ATTORNEY'S FEE
WCC File No.: 1307922**

After review of the record in the above captioned matter and the controlling legal standards for the award of attorney fees and costs in workers' compensation proceedings under S.C. Reg. 1204-1207 and Rule 1.5(a) of the Code of Professional Conduct, I find the attorney's fee of \$73,094.45 and costs of N/A in this matter to be reasonable and hereby approve fees and costs as set forth herein.

AND IT IS SO ORDERED.

Date: _____

COMMISSIONER
SCWCC

Select Option: WCC# ▾

Attorney/Carrier: All

WCC #:

SSN: _____

Preston F. McDaniel
Matthew C. Robertson

Date Range: _____ - _____

Status Group: _____ ▾

Submit

Cancel

This information is subject to change and is not to be considered Official Notice from the SC Workers' Compensation Commission.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Report run: 12/12/17 15:16

Report Criteria: WCC#: 1307922

Click WCC# for More Information

WCC #	Caption	D/O/I	Carrier	Attorney for Defendant	Attorney for Claimant	Status
1307922	Pamela O Cartee - VS- SC JUDICIAL DEPT.	03/01/13	State Accident Fund P.O. Box 102100 Columbia SC 2 9221 bjthompson@s af.sc.gov (800) 521- 6576	Sarah C Sutusky Willson Jones Carter & Baxley, P.A. 3600 Forest Drive, Suite 204 COLUMBIA S C 29204 scsutusky@wj aw.net (803) 227- 2885 Erin Farthing State Accident Fund PO Box 102100 Columbia SC 2 9221 EFarthing@saf .sc.gov (803) 896- 5892	Preston F. McDaniel McDaniel Law Firm 1315 Elmwood Ave. Columbia SC 2 9201 preston@pfmc dlaw.com (803) 771- 7211 JOHN M MILLING ATTORNEY AT LAW PO Box 519 DARLINGTO N SC 2953232 16 johnmilling@b ellsouth.net	12/12/17 Form 19 Received 12/11/17 Attorney Fee Petition Sent to Comm. for Approval 12/11/17 Attorney Fee Petition Received 10/17/17 Order Served 09/21/17 FC Order Assigned 09/08/17 Form 18 Received 09/07/17 Order Assigned to be Written

Sabrina Kelley

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Monday, December 18, 2017 10:25 AM
To: Sabrina Kelley
Subject: RE: Pam Cartee 1307922

Sure, it has not been approved yet. Commissioner McCaskill has been running around all morning and hasn't had a chance to sit down in his office yet!

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Monday, December 18, 2017 10:23 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Pam Cartee 1307922

Hi Kellie:

Can you check on the Pam Cartee fee petition approval for us?

& Also, Preston requested that Block & McCoy get reset for a later date in Jan. Can you also check on that (only reason I ask is our PHB are due tom)

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Friday, December 15, 2017 9:17 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Pam Cartee 1307922

No, ma'am, Commissioner McCaskill has been in hearings in Goose Creek this week. He will be in the office Monday though.

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Friday, December 15, 2017 8:52 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Pam Cartee 1307922

Good morning Kellie:

Was this approved yesterday

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Thursday, December 14, 2017 10:53 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Pam Cartee 1307922

Oh, Yes, ma'am, I will let you know if there is a problem or if he approves it!

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Thursday, December 14, 2017 10:53 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Pam Cartee 1307922

Ok great thanks. Can you let me know when he approves it ☺

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [<mailto:klindler@wcc.sc.gov>]
Sent: Thursday, December 14, 2017 10:16 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Pam Cartee 1307922

Hello! Commissioner McCaskill still has this on his desk to review.

From: Sabrina Kelley [<mailto:sabrina@pfmcdlaw.com>]
Sent: Thursday, December 14, 2017 10:14 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: Pam Cartee 1307922

Hi Kellie: (Boy you are popular with us this week 😊)

Can you let me know if our Atty Fee Petition was approved? The claim says its closed now thru ecase

I appreciate all your help

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
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Sabrina Kelley

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Wednesday, December 20, 2017 3:15 PM
To: Sabrina Kelley
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Merry Christmas to you! I will email you either way – if there is a problem or if it is approved.

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Wednesday, December 20, 2017 3:08 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Ok, it was worth a try 😊 Well if I don't talk to you , Merry Christmas

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Wednesday, December 20, 2017 3:06 PM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Sweetie, I honestly have no idea. The good news is Commissioner McCaskill and I both will be in the office tomorrow. Friday, Monday and Tuesday are all state holidays. We both will be back in the office on Wednesday and Thursday and Friday my boss will be in Goose Creek for hearings.

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Wednesday, December 20, 2017 3:03 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Hi Kellie:

Do you think the fees will be approved by Tom?

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [<mailto:klindler@wcc.sc.gov>]
Sent: Tuesday, December 19, 2017 4:04 PM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Thanks for your patience today, it has been extremely hectic with everyone trying to get things rushed in due to the upcoming holidays. The fee has not been approved – don't know why not.
The two hearings will be moved.

From: Sabrina Kelley [<mailto:sabrina@pfmcdlaw.com>]
Sent: Tuesday, December 19, 2017 2:25 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Kellie:

Our power is going out at 3pm (they are disconnecting replacing a pole & line across the street) did they let you know if these 2 hearings are re-set

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave

Columbia, SC 29201

Telephone : (803) 771-7211

Fax : (803) 252-0709

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From: Lindler, Kellie [<mailto:klindler@wcc.sc.gov>]
Sent: Tuesday, December 19, 2017 10:50 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Your message

To: Lindler, Kellie
Subject: Cartee (1307922) Block(1407913) & McCoy(1200027)
Sent: Tuesday, December 19, 2017 10:53:03 AM (UTC-04:00) Atlantic Time (Canada)

was read on Tuesday, December 19, 2017 11:50:17 AM (UTC-04:00) Atlantic Time (Canada).

Sabrina Kelley

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Thursday, December 21, 2017 3:16 PM
To: 'Lindler, Kellie'
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Ok thanks Kellie

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Thursday, December 21, 2017 1:45 PM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

FYI - The fee has not been approved yet.

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Wednesday, December 20, 2017 3:03 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Hi Kellie:

Do you think the fees will be approved by Tom?

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave

Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [<mailto:klindler@wcc.sc.gov>]
Sent: Tuesday, December 19, 2017 4:04 PM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Thanks for your patience today, it has been extremely hectic with everyone trying to get things rushed in due to the upcoming holidays. The fee has not been approved – don't know why not.
The two hearings will be moved.

From: Sabrina Kelley [<mailto:sabrina@pfmcdlaw.com>]
Sent: Tuesday, December 19, 2017 2:25 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Kellie:

Our power is going out at 3pm (they are disconnecting replacing a pole & line across the street) did they let you know if these 2 hearings are re-set

Thanks,

Sabrina M. Kelley, Paralegal to

Preston F. McDaniel

McDaniel Law Firm

1315 Elmwood Ave

Columbia, SC 29201

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destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

From: Lindler, Kellie [<mailto:klindler@wcc.sc.gov>]
Sent: Tuesday, December 19, 2017 10:50 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: Read: Cartee (1307922) Block(1407913) & McCoy(1200027)

Your message

To: Lindler, Kellie
Subject: Cartee (1307922) Block(1407913) & McCoy(1200027)
Sent: Tuesday, December 19, 2017 10:53:03 AM (UTC-04:00) Atlantic Time (Canada)

was read on Tuesday, December 19, 2017 11:50:17 AM (UTC-04:00) Atlantic Time (Canada).

Sabrina Kelley

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Wednesday, December 27, 2017 11:35 AM
To: Sabrina Kelley
Subject: RE: Pam Cartee Atty Fee 1307922

Good Morning!

I just spoke to Commissioner McCaskill and the fee is not approved. That is to say, that does not mean it is DISapproved, it means he just needs to take it under advisement a bit longer. He appreciates your patience.
Kellie

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Wednesday, December 27, 2017 11:32 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: Pam Cartee Atty Fee 1307922

Hi Kellie:

Hope you had a Merry Christmas. I was wondering if you could get with the Commissioner and see if our fee petition is approved.

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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Sabrina Kelley

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Tuesday, January 2, 2018 10:48 AM
To: 'Lindler, Kellie'
Subject: RE: Pam Cartee 1307922

That would be great. Thanks :)

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Tuesday, January 2, 2018 10:29 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Pam Cartee 1307922

No, ma'am. Commissioner McCaskill is in the office today. Fingers crossed! He will be out of the office tomorrow and Thursday in Hearings.

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Tuesday, January 02, 2018 9:48 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: Pam Cartee 1307922

Kellie:

Anything new on Pam Cartee's fee approval? Is there anything more I can or need to do.

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm

1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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Sabrina Kelley

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Tuesday, January 9, 2018 9:22 AM
To: Sabrina Kelley
Cc: preston@pfmcdlaw.com
Subject: RE: Pam Cartee 1307922

From Commissioner McCaskill:

I have reviewed your fee petition in Pamela Cartee v. SC Judicial Department several times. I have also reviewed the law I believe to be applicable. I can only find justification for a fee of \$59,632.69. If you wish to amend your Form 61 to reflect this amount as your fee, I will approve the fee petition. Otherwise, I am glad to set the matter for a hearing pursuant to the Act. I am happy to hear your position.

From: Lindler, Kellie
Sent: Thursday, December 14, 2017 10:53 AM
To: 'Sabrina Kelley' <sabrina@pfmcdlaw.com>
Subject: RE: Pam Cartee 1307922

Oh, Yes, ma'am, I will let you know if there is a problem or if he approves it!

From: Sabrina Kelley [<mailto:sabrina@pfmcdlaw.com>]
Sent: Thursday, December 14, 2017 10:53 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: RE: Pam Cartee 1307922

Ok great thanks. Can you let me know when he approves it ☺

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [<mailto:klindler@wcc.sc.gov>]
Sent: Thursday, December 14, 2017 10:16 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Subject: RE: Pam Cartee 1307922

Hello! Commissioner McCaskill still has this on his desk to review.

From: Sabrina Kelley [<mailto:sabrina@pfmcdlaw.com>]
Sent: Thursday, December 14, 2017 10:14 AM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Subject: Pam Cartee 1307922

Hi Kellie: (Boy you are poplar with us this week 😊)

Can you let me know if our Atty Fee Petition was approved? The claim says its closed now thru ecase

I appreciate all your help

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
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Sabrina Kelley

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Tuesday, January 9, 2018 2:30 PM
To: Sabrina Kelley
Cc: John Milling
Subject: RE: Pam Cartee 1307922

Thank you, I will forward this to Commissioner McCaskill now.

From: Sabrina Kelley [mailto:sabrina@pfmcdlaw.com]
Sent: Tuesday, January 09, 2018 2:21 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Cc: John Milling <johnmilling@bellsouth.net>
Subject: Pam Cartee 1307922

I asked Kelly to forward this to you if possible, in hopes that we can get an answer.

Dear Commissioner McCaskill:

Since this is a standard 1/3 contingency fee based on the Final Total And Permanent Disability Award made to Mrs. Cartee at the time she was declared totally and permanent disabled and while I do not understand what questions you have, I would submit the following in addition to what else we have provided in support of our Fee Petition so we can hopefully get this resolved:

- 1) After my involvement we increased Mrs. Cartee's Comp Rate from \$514.39 to \$698.41, for a difference of \$184.02/wk and over 500 weeks, that totals \$92,010.
- 2) Under the Award for PTD, Mrs. Cartee has received a Final Award of \$220,283.33 and after our attorneys' fees she has received a total of \$147,188.88. The total value of the Award to Mrs. Cartee's under the new comp rate we obtained was \$349,205. If you combine the previous attorneys' fees approved from the underpayment for the back due period and our current request for attorney's fees that equals to a total of \$82,961.43 far less than 1/3 of the total value of the case. Mrs. Cartee has received a total of \$266,243.57 in compensation whereas before our involvement, she would have been entitled to a total compensation uncommuted of \$257,195 without our representation if she could have obtained a PTD Award.

Finally I have a new paralegal that submitted the 61 and itemized disbursement statement and we may not have been explanatory enough and for that I apologize but we are simply requesting 1/3 contingency fee of the final award. I look forward to hearing from you.

As always, our fee request is per statute and regulation but if you have any further questions, I will be glad to answer those by phone or in person.

I appreciate all of the courtesies and kindnesses shown to me by the Commission, you and your office.

Thanks,

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

**Proudly representing injured workers
for over 30 years.**

Preston F. McDaniel
771-7211

Telephone (803)

Matthew C. Robertson

Facsimile (803) 252-0709

Drafted January 8, 2018
Redrafted January 9, 2018

Commissioner McCaskill
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Pamela O. Cartee v. SC Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

[Based on your email this morning: I will disperse to my co]
[counsel and me as to the uncontested portion of the fee due to]
[us for our representation; I would request the Hearing provided]
[for in the Code and in your email; and I will hold the]
[contested balance in trust pending re-consideration or Hearing]
[and/or Appeal. I had already drafted the letter below and the]
[separate email that is also attached and will submit those to]
[you for your consideration prior to or at the Hearing.]

[It is obvious that your fee analysis is based on the]
[residual lump sum payment sent to us at the time that the State]
[Accident Fund decided to stop appealing and pay the Award. So]
[am I to understand that when the Commission makes an Award and]
[the defense decides to Appeal that Award to the Full Commission]
[to the Court of Appeals and/or even to the Supreme Court, that]
[the attorney obtaining that Award is only entitled to]
[attorney's fees based on the residual value at the time they]
[finally stop appealing; so the attorney's fee is reduced and]
[the attorney is penalized due to their Appeal. Commissioner,]
[quite frankly that is what you are saying and as noted I am]
[submitting the following letter and email for your]
[consideration. I look forward to seeing you at the Hearing,]
[which I assume will be on the Record.]

Drafted January 8th:

I do not understand this situation and in the over 35 years
that I have practiced before the Commission, I have only received

two calls from a Commissioner requesting additional information concerning the fee requested. Both of those calls were received within days of the submission of the form required by the Commission and both were approved after explanation.

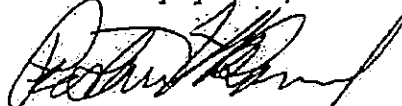
We are to submit our fees in accordance with Rule 67-1205 and I would submit that our fee petition filed December 8, 2017 is in accordance with Rule 67-1205(C)(2) under the Final Award for PTD Awarded by you.

Rule 67-1204 (F) provides that, "if the Form 61 and Order do not comply with Rule 67-1205, the Commissioner reviewing the Form 61 and Order shall immediately schedule a Hearing to consider argument of counsel and testimony, if any." Since we submitted the Form 61 and Order on December 8th and it is now January 8th, I would respectfully request a Hearing as provided for in Rule 67-1204 anywhere in the State. To expedite this Hearing, I am sending a copy of this request to Mrs. Cartee and would ask her to respond to your office directly if she wants to waive appearance so we can get our fees approved. Knowing that we fully explained the fees to her and knowing how much she thinks of Mr. Milling and myself, I doubt she has any objection or anyway contest this fee being approved. I would also ask her to express any concerns if she has any. I would ask Mrs. Cartee to send a copy of her response to me so I can expedite this with your office and get this matter set in the next couple of days.

I apologize for this request and I hope you do not take offense but I know of nothing else to do considering your schedule and mine (wherein over the last month I came to the Commission 3 times and have repeatedly asked for a phone conference) and I'm sure you can understand that since Mr. Milling and I are on a contingency basis on the claimant's side of the ledger this is having an effect on our practices and ability to represent our clients.

In the alternative, I would welcome a telephone call to answer any questions.

Sincerely yours,



Preston F. McDaniel

PFM/smk
Enclosures

cc: John M. Milling, Esquire
Pam Cartee

Sabrina Kelley

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Tuesday, January 16, 2018 12:03 PM
To: 'Lindler, Kellie'
Subject: RE: Pam Cartee 1307922

Hi Kellie:

I've been out for a couple of days sick, but can you tell me if this Hearing has been set

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Tuesday, January 9, 2018 3:30 PM
To: John Milling <johnmilling@bellsouth.net>; 'Sabrina Kelley' <sabrina@pfmcdlaw.com>
Subject: RE: Pam Cartee 1307922

Yes, sir. Thank you.

From: John Milling <johnmilling@bellsouth.net>
Sent: Tuesday, January 9, 2018 3:29 PM
To: 'Lindler, Kellie'; 'Sabrina Kelley'
Subject: RE: Pam Cartee 1307922

Thank you Kellie. Just keep us posted as to when and where we are to show up. Have a good balance of the week and we will of course provide whatever information you need. Thank you again. John Milling

From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Tuesday, January 09, 2018 2:37 PM
To: Sabrina Kelley
Cc: John Milling
Subject: RE: Pam Cartee 1307922

I will begin to secure a hearing location.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1307922
Carrier File #: 2013001614
January 17, 2018

NOTICE OF HEARING

Pamela O Cartee v. SC JUDICIAL DEPT.

Subject: To resolve the dispute of Attorney Fees.
Date: February 12, 2018 at 10:00 AM
Location: SC Workers' Compensation Commission, 1333 Main Street, Suite 500 Hearing Room B
Columbia, SC 29201

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Gene McCaskill
803-737-5663, klindler@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Kellie C Lindler, SC Workers' Compensation, January 17, 2018

Party

Employee: Pamela O Cartee

Attorney

JOHN M MILLING
johnmilling@bellsouth.net

Employee: Pamela O Cartee

Preston F. McDaniel
preston@pfmcldlaw.com
803-771-7211

Employer: SC JUDICIAL DEPT.
Carrier: State Accident Fund

Erin Farthing
EFarthing@saf.sc.gov
803-896-5892

Employer: SC JUDICIAL DEPT.
Carrier: State Accident Fund

Sarah C Sutusky
scsutusky@wjlaw.net
803-227-2885

Sabrina Kelley

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Monday, January 22, 2018 12:54 PM
To: Sarah C. Sutusky; AHAM@PFMCDLAW.COM; Ashley J. Sidney; BJTHOMPSON@SAF.SC.GOV; CADAN@SAF.SC.GOV; CRYSTAL@PFMCDLAW.COM; EFARTHING@SAF.SC.GOV; JOHNMILLING@BELLSOUTH.NET; PRESTON@PFMCDLAW.COM; ROSE@PFMCDLAW.COM; SABRINA@PFMCDLAW.COM; VJACKSON@SAF.SC.GOV
Subject: RE: Hearing Notice - WCC# 1307922: Cartee

Thank you. I will make a note for the file.

From: Sarah C. Sutusky [mailto:scsutusky@wjlaw.net]
Sent: Monday, January 22, 2018 12:06 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>; AHAM@PFMCDLAW.COM; Ashley J. Sidney <ajsidney@wjlaw.net>; BJTHOMPSON@SAF.SC.GOV; CADAN@SAF.SC.GOV; CRYSTAL@PFMCDLAW.COM; EFARTHING@SAF.SC.GOV; JOHNMILLING@BELLSOUTH.NET; PRESTON@PFMCDLAW.COM; ROSE@PFMCDLAW.COM; SABRINA@PFMCDLAW.COM; VJACKSON@SAF.SC.GOV
Subject: RE: Hearing Notice - WCC# 1307922: Cartee

Good morning,

As this is a fee dispute hearing, I do not plan to attend unless you all instruct me otherwise. Please advise. Thank you.

Sarah

WJC&B

**WILLSON JONES CARTER
& BAXLEY, P.A.**

Sarah C. Sutusky, Attorney
scsutusky@wjlaw.net
3600 Forest Drive, Suite 204
Columbia, South Carolina 29204
Phone: (803) 227-2885
Fax: (803) 782-2527
wjcbllaw.com

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately and do not forward this message to any other person.

From: klindler@wcc.sc.gov [mailto:klindler@wcc.sc.gov]
Sent: Wednesday, January 17, 2018 4:48 PM
To: KLINDLER@WCC.SC.GOV; AHAM@PFMCDLAW.COM; Ashley J. Sidney <ajsidney@wjlaw.net>; BJTHOMPSON@SAF.SC.GOV; CADAN@SAF.SC.GOV; CRYSTAL@PFMCDLAW.COM; EFARTHING@SAF.SC.GOV; JOHNMILLING@BELLSOUTH.NET; PRESTON@PFMCDLAW.COM; ROSE@PFMCDLAW.COM; SABRINA@PFMCDLAW.COM; Sarah C. Sutusky <scsutusky@wjlaw.net>; VJACKSON@SAF.SC.GOV
Subject: Hearing Notice - WCC# 1307922: Cartee

Attached please find Notice of Hearing before the SC Workers' Compensation Commission in the above referenced matter.

Pamela Ozment-Cartee
Hartsville, South Carolina 29550

January 25, 2018

Commissioner Gene McCaskill
The Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Pam Cartee v S. C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

Please accept this letter in lieu of my presence at any hearing on attorney fees in the above reference matter regarding my attorney Preston F. McDaniel. I have no objection to the commissioners going forward without my presence; however if you do make a request for my presence I will be happy to attend.

May I also say, as a retired circuit court reporter, I had quite the choice of attorneys to choose from, I chose these attorneys, and I have the utmost and complete trust and confidence in Mr. McDaniel and Judge Milling.

I have absolutely no issues whatsoever with you granting the full amount requested for attorneys' fees as submitted. I was fully aware of what those fees were when I hired Mr. McDaniel and Judge Milling, and have been kept completely and thoroughly informed throughout this entire complicated process. I have seen the fees completely broken down, and all moneys have been accounted for to the penny.

Personally, I do not see a reason for this hearing. This hearing should be dismissed and attorney fees approved. However, if you find it necessary to have this hearing, would the commissioners be so kind as to just approve the fees for payment, pay promptly, close this case and file it away.

I would like to say one more thing. This case has been so upsetting in my life. Now, almost five years later my life has been turned upside down by Workers' Comp. You are supposed to be a branch of our government that is geared to help people who have been injured so they can work with you and settle their own cases in a fair and equitable manner without the assistance of counsel. So often that does not happen, as in my case. This has been an uphill battle all the way. If there are any questions regarding that statement, I believe the Order will make it perfectly clear.

Sincerely,


Pamela Ozment-Cartee
Retired Circuit Court Reporter

cc: Preston F. McDaniel
The Honorable John Milling
The Full Commission

Preston McDaniel

From: John Milling <johnmilling@bellsouth.net>
Sent: Wednesday, January 31, 2018 10:13 AM
To: 'Lindler, Kellie'; PRESTON@PFMCDLAW.COM; Susan Bridgers
Subject: Pam Cartee hearing on February 12, 2018

Kellie, I have advised Preston already but realized I had not previously contacted you. I have an out of state commitment that was set up last fall and will be gone from February 10 through February 14, 2018. Rather than trying to reschedule the matter to another time, I am happy with the hearing going forward with Preston handling the matter on our behalf. If you have any questions, please let me know and give my regards to Commissioner McCaskill. Thank you. John Milling

--

Sabrina Kelley

From: John Milling <johnmilling@bellsouth.net>
Sent: Tuesday, January 9, 2018 3:29 PM
To: 'Lindler, Kellie'; 'Sabrina Kelley'
Subject: RE: Pam Cartee 1307922

Thank you Kellie. Just keep us posted as to when and where we are to show up. Have a good balance of the week and we will of course provide whatever information you need. Thank you again. John Milling

From: Lindler, Kellie [mailto:klindler@wcc.sc.gov]
Sent: Tuesday, January 09, 2018 2:37 PM
To: Sabrina Kelley
Cc: John Milling
Subject: RE: Pam Cartee 1307922

I will begin to secure a hearing location.

From: Sabrina Kelley [mailto:sabrina@pfmcdlawcom]
Sent: Tuesday, January 09, 2018 2:21 PM
To: Lindler, Kellie <klindler@wcc.sc.gov>
Cc: John Milling <johnmilling@bellsouth.net>
Subject: Pam Cartee 1307922

I asked Kelly to forward this to you if possible, in hopes that we can get an answer.

Dear Commissioner McCaskill:

Since this is a standard 1/3 contingency fee based on the Final Total And Permanent Disability Award made to Mrs. Cartee at the time she was declared totally and permanent disabled and while I do not understand what questions you have, I would submit the following in addition to what else we have provided in support of our Fee Petition so we can hopefully get this resolved:

- 1) After my involvement we increased Mrs. Cartee's Comp Rate from \$514.39 to \$698.41, for a difference of \$184.02/wk and over 500 weeks, that totals \$92,010.
- 2) Under the Award for PTD, Mrs. Cartee has received a Final Award of \$220,283.33 and after our attorneys' fees she has received a total of \$147,188.88. The total value of the Award to Mrs. Cartee's under the new comp rate we obtained was \$349,205. If you combine the previous attorneys' fees approved from the underpayment for the back due period and our current request for attorney's fees that equals to a total of \$82,961.43 far less than 1/3 of the total value of the case. Mrs. Cartee has received a total of \$266,243.57 in compensation whereas before our involvement, she would have been entitled to a total compensation uncommuted of \$257,195 without our representation if she could have obtained a PTD Award.

Finally I have a new paralegal that submitted the 61 and itemized disbursement statement and we may not have been explanatory enough and for that I apologize but we are simply requesting 1/3 contingency fee of the final award. I look forward to hearing from you.

As always, our fee request is per statute and regulation but if you have any further questions, I will be glad to answer those by phone or in person.

I appreciate all of the courtesies and kindnesses shown to me by the Commission, you and your office.

Thanks,

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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Preston McDaniel

From: Lindler, Kellie <klindler@wcc.sc.gov>
Sent: Tuesday, February 20, 2018 3:46 PM
To: Sabrina Kelley; PRESTON@PFMCDLAW.COM
Subject: RE: Pam Cartee v S. C. Judicial Department WCC File No. 1307922 Hearing Date 2/12/18 10:00

Mr. McDaniel, I received your voice mail regarding this matter. Commissioner McCaskill is not inclined to re-open the record to put his position on the record as you have requested. He is still taking this matter under advisement.

From: Lindler, Kellie
Sent: Thursday, February 01, 2018 11:10 AM
To: 'Pamela Cartee' <pocartee@gmail.com>; Sabrina Kelley <sabrina@pfmcdlaw.com>; John M. Milling <johnmilling@bellsouth.net>
Subject: RE: Pam Cartee v S. C. Judicial Department WCC File No. 1307922 Hearing Date 2/12/18 10:00

Thank you, I will be happy to attach this to the file.

From: Pamela Cartee [<mailto:pocartee@gmail.com>]
Sent: Thursday, January 25, 2018 4:30 PM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>; John M. Milling <johnmilling@bellsouth.net>
Cc: Lindler, Kellie <klindler@wcc.sc.gov>; tmorris@www.sc.gov; dhutto@ww.sc.gov; Cheeseboro, Barbara <BCheseboro@wcc.sc.gov>; sdebruhl@www.sc.gov; rgsmith@www.sc.gov; bskarbek@www.sc.gov
Subject: Pam Cartee v S. C. Judicial Department WCC File No. 1307922 Hearing Date 2/12/18 10:00

Please find attached my letter in the above referenced hearing.

Thank you, Pam Cartee

*To the child of God, there is no such thing as an accident.
He travels an appointed way.*

A. Tozer

Pam and Lanny D

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

February 21, 2018

VIA EMAIL - klindler@wcc.sc.gov

AND US MAIL

Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

IMMEDIATE ATTENTION REQUESTED
PLEASE

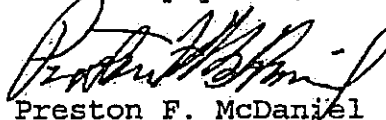
RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

Most respectfully, our fee request is in accordance with Statute, Regulation, Case Law, and Commission practice (Awards/MMI). As you know, I consider this to be a matter of principle and after much deliberation I have decided to take this matter up with the Supreme Court. I hope that I have been respectful during this 2 ½ -3 month ordeal.

I believe this is best for everyone as while I do not know your position, I can only assume that you as the assigned Commissioner have a different interpretation of the law than I do. As I have been since December 5th and at the Hearing I will be available all day to answer any concerns or questions you have. I anticipate ~~of~~ Filing the Writ tomorrow or Friday. As always, I appreciate all of the courtesies and kindnesses shown to me by you, your office and the Commission.

Sincerely yours,



Preston F. McDaniel

PFM/smk

cc: John Milling, Esquire (via email johnmilling@bellsouth.net)

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COLUMBIA, SOUTH CAROLINA 29201

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Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

February 22, 2018

VIA EMAIL - klindler@wcc.sc.gov
AND US MAIL
Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

I am in receipt of the Interim Order and most respectfully, it needs to be amended in that after filing our Fee Petition on December 5th and after repeatedly requesting an opportunity to answer any questions you may have, on January 9th, you advised us that based on your interpretation of the law, we were only entitled to a fee of \$59,632.69. At the hearing, as a lawyer and as an officer of the Court, I handed up to you the Statute, the Regulations and the case law which specifically state and establish that our Fee Petition was in accordance with law. At the hearing, we also went over the date of MMI, the date of the Permanent P+T Award, the uncommuted value received and the residual commuted value. You did not contest the Statute, the Regulations, the case law or any of the figures. Therefore, again, as I have been told and am aware, this dispute is over your interpretation of the law versus mine. Quote your email 9:22 a.m., January 9, 2018: "I have also reviewed the law I believe to be applicable ...". (emp. added). That email was thirty-five days after the request was submitted.

I have refrained from saying this but as a reminder, it is improper for any judicial officer whether that be a Judge or Commissioner or otherwise to confer with anybody else or to seek legal advice on any matter pending before them without notifying the parties.

You do not have to amend the Interim Order. You can just send me a quick note notifying me that the issue is between your legal interpretation, and I want to reiterate, your legal interpretation of the statute, regulations and rules versus mine.

0034

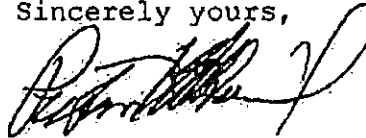
Commissioner Gene McCaskill
February 22, 2018
Page 2

So far you have not told me even one difference between your legal interpretation and mine. If you will tell me what it is and allow me to discuss that with you, I will hold off on filing anything.

My practice is almost exclusively limited to workers' compensation; I have no desire to upset you; I personally think the world you; I enjoy appearing before you; I have the utmost respect for you as a lay Commissioner; I think you do an excellent job but this affects my family and my staff and my reputation as a lawyer. I take this as a slander on my name that I am requesting a fee to which I am not entitled. Again, for any client of mine to even think or for it to be inferred to them that I am asking for a fee to which I am not entitled, (I've tried to avoid this), infuriates me. My father told me, "son, you are a poor boy. Go get your education; they can't take away from you. I give you my good name. Do not spoil it." This is a personal affront to me.

If you will have Kellie call me, again, I will be glad to hold off. Otherwise, I will proceed with filing a Writ and of course everything that has been put in writing will be made part of the Record in the Supreme Court.

Sincerely yours,



Preston F. McDaniel

PFM/abh

cc: John Milling, Esquire (via email johnmillingsc@bellsouth.net)

001 05
01 02 20
0.000

DeBruhl, Shawn

From: Rose Thielke <rose@pfmcdlaw.com>
Sent: Friday, March 02, 2018 2:52 PM
To: DeBruhl, Shawn
Subject: Pamela Cartee v SC Judicial Dept
Attachments: SCAN18030214560.pdf

Shawnee:

Attached is letter/email to Commissioner McCaskill, which I would appreciate it if you could get over to him today for his consideration.

Thank you.

Preston McDaniel

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

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Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

March 2, 2018

VIA EMAIL - klindler@wcc.sc.gov
Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

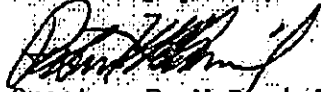
Due to Kelly's mother's death, I forwarded this to Shawnee, because I wanted you to see it as soon as possible. I will try to hand deliver a copy late today of what I will refer to as Revised/Corrected format 61 and Disbursement Statement. Hopefully this revised/restated fee petition will allow you to quickly approve the balance.

As I originally expressed, a new paralegal submitted the original form which I believe caused the question and for that reason I am submitting the Revised format, which Ms. Cartee has no objection to me providing, but which I will be glad to get her to sign if you want me to.

I would ask you to review the revised format and if it explains any concerns you had, please attach it to the original fee petition and return to me as approved, or again I will be glad to get Ms. Cartee to sign it if you prefer.

I am submitting this in hopes of getting this issue resolved and avoiding further litigation. If you would like to speak to me I will be available all day in my office, or at your convenience, on my cell at 606-2107.

Sincerely yours,



Preston F. McDaniel

PEM/rmt

South Carolina Workers' Compensation Commission
1612 Marion Street
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723



WCC File #: 1307922
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Pamela Cartee
Address: _____
City: Hartsville State: SC Zip: 29550
Home Phone: () Work Phone: ()

Employer's Name: SC Judicial Department
Address: 1015 Sumter Street
City: Columbia State: SC Zip: 29201
Insurance Carrier: State Accident Fund
Preparer's Name: Preston F. McDaniel Law Firm: McDaniel Law Firm Preparer's Phone #: (803) 771 - 7211

Date Attorney Was Hired: 3/26/14

Date of Injury: 5/1/13

Compensation Rate: _____

Does this conclude the case? ☒ Yes ☐ No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

☒ A. R.67-1205C does not apply to the facts of this case. A 33 % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

☐ B. The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:

Date of first Impairment rating or offer of settlement: _____

Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____

Impairment Rating given and/or Settlement amount offered after date attorney hired: _____

Authorized Health Care Provider's Name: _____

☐ C. Admitted Death Claim - \$2,500.

☐ D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

REVISED/CORRECTED FORMAT
Attorney for the Claimant

Date _____

Summary	
Total Amount of Compensation \$339,711.47	Final Award \$220,283.33
Attorney's Fee	\$73,094.45 (Final Award)
Costs	Reimbursed from 1 st Award
Total Fees and Costs	\$73,094.45
Client Will Receive from Final Award	\$147,188.88

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

REVISED/CORRECTED FORMAT
Client

Date _____

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

WCC Form # 61
Revised 7/08

61

ATTORNEY FEE PETITION

REVISED

D I S B U R S E M E N T S T A T E M E N T

REVISED/CORRECTED AS TO FORMAT

RE: Pamela Cartee v. SC Judicial Dept.
WCC File No. 1307922

I. Receipts:

Total Compensation Paid: \$339,771.44

[Attorneys increased C/R from]
[\$514.39 to \$698.41=Diff. \$184.02]
[\$184.02x 500= \$92,010.00]

Final Award of Total and
Permanent Disability with Lifetime
Medical Care =

\$220,283.33

Check # 1037482- Residual Lump Sum
As of 12/1/17-\$179,077.14

II. Attorney's fees, costs and disbursements:

Attorney's Fees: Preston F. McDaniel
John Millings

(\$73,094.45)

[Fee Based on Award PTD/MMI Date 10/12/16]
[paid weekly from 10/12/16 to 12/1/17,]
[Approx 59 weeks x \$698.41/CR=\$41,206.19;]
[Commutated Value(12/1)=]
[\$179,077.14 + \$41,206.19= \$220,283.33]
[Total Value of PTD Award=\$220,283.33]
[Actual Fees =\$73,427.78 Due (1/3 Award)]
[Requested =\$73,094.45]

Advanced Costs: Preston F. McDaniel:

Previously Reimbursed/Approved from Lump Sum
Of TTD Underpayment

(Reimbursed)

III. Net Proceeds to Client after disbursements
From Final Award (41,206.19 + 105,982.69):

\$147,188.88

Reviewed and submitted by:

PRESTON F. MCDANIEL

Client certification and statement:

I hereby certify that I have received a copy of the Statement
of Disbursements and that I have reviewed and understand the
same. I further understand that any other outstanding costs
and non-authorized medical expenses are my sole responsibility.

Pamela Cartee

Dated this ____ day of _____, 2018.

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

**Proudly representing injured workers
for over 30 years.**

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

March 7, 2018

VIA EMAIL - klindler@wcc.sc.gov
Commissioner Gene McCaskill
South Carolina Workers' Commission
P. O. Box 1715
Columbia, South Carolina 29202

RE: Pamela O. Cartee vs. S.C. Judicial Department
WCC File No. 1307922

Dear Commissioner McCaskill:

Sadly, I am in receipt of your Order which states it denied a request for "additional attorney's fees." For the Record, that is wrong. The dispute is over the balance of the original attorney's fees request filed on December 5, 2017. It is my understanding that your written denial, entered three (3) months after the request was filed, is based on your interpretation of the Law. However again for the Record you expressed no disagreement with the Law that I presented to you at the Hearing and I have asked you to put your position on the Record because I wanted to know what your position was since there was no disagreement as to my statement of the Law to you at the Hearing, which you refused to do.

For the Record I have read the Order and it contains several legal positions and legal concepts never referred to by me such as the, "determination of the award with finality could not be reached until my Order became the Law of the Case." Law of the Case is a legal concept.

You also state that, "I cannot find any persuasive authority for an Award beyond that amount. I awarded the claimant total and permanent disability on 04/13/17," (emphasis added). That is simply not true. I cited to you persuasive and the uncontradicted opinion of the Supreme Court at the Hearing. You also acknowledge in the Order that you made the "Award" on April 13, 2017.

I look forward to the Declaratory Judgment Action, discovery, and the Appeal and getting this matter corrected.

Commissioner Gene McCaskill
March 7, 2018
Page 2

Finally, please note I have a co-counsel, and a copy of this Decision must be served on Mr. Milling.

Sincerely yours,



Preston F. McDaniel

PFM/smk
Cc: John Milling

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
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COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Freston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

March 13, 2018

VIA EMAIL ONLY: abracy@wcc.sc.gov
Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Cartee v. SC Judicial Department
WCC File No. 1307922

Dear Amy:

For the first time in 42 years of practicing law I've had a Commissioner not approve a portion of our attorney's fees requested. I have until March 20th. to file an appeal if that applies in this situation and I am seeking the advice of the Commission on how to proceed. I am sending a copy of this to Keith Roberts and would appreciate it if one of you could get back to me on how to proceed.

Under S.C. Code §42-15-90 I may seek approval by the Commission or by any Court of competent jurisdiction of any fee charged in a Worker's Compensation case. There is no referral in the Statute to Appeal.

Section 42-17-50 of course, allows for an Appeal from an "Award" of the Commission but 67-701 makes it clear that I have to serve the opposing party with the Form 30 to be accepted by the Commission and there is no opposing party unless it would be my client; who wants us paid. So who is served?

Next, Rule 67-1204 and 1205 say nothing about an Appeal.

In this case we submitted our request for approval of attorney's fees on December 5th and although subsection "F" requires that if the Commissioner has any question about the request the Commissioner, "shall immediately schedule a Hearing to consider argument of counsel and testimony, if any." That did not happen. Under Subsection "E" the Hearing Commissioner could have Amended the Order, signed and returned it and if we disagreed with the Amended Order we could "file a Motion" with the Judicial Dept. That did not happen either in this case.

In January, over a month later, after making numerous requests on the status, I wrote Commissioner McCaskill and only then he set a Hearing for February at which I presented argument, but he would not allow me to be sworn. Then a month after that Hearing, I received an Order by email.

Amy Bracy, Judicial Director
March 13, 2018
Page 2

My question in reference to that Order is, is this the Order that is referred to under Subsection "E" of 1204, so can I file a Motion with the Judicial Dept. to get, for a better term, reconsideration. Again, according to my reading of 67-1203, 1204, 1205, 1206, 1207, I do not see where there is any provision for an Appeal.

So do I file a Motion for a Hearing or should I file an Appeal.

For safety's sake, unless I hear from you, I am going to draft a Form 30 Appeal and serve it on my client, who by the way again wants my fee and that of my co-counsel, Judge Milling paid. I will go ahead and file that Appeal if I haven't heard from you by the 20th. I would ask you to hold the check til I can get an answer from y'all as to whether or not I should appeal now and I will hold off on filing a Motion until I hear back from you in that regard.

I am probably going to proceed with requesting a hearing before the Administrative Law Court which I believe has jurisdiction over this issue as well. Also, I am going to draft/file some type of Declaratory Judgment action in Circuit Court to obtain discovery and to have a Judicial determination made as to whether our fee requested is in accordance with statute, regulation and case law.

Again I am sorry to submit this to you or cause any expenditure on behalf of the Commission, but I am trying to proceed according to Law to get this issue resolved. This is a matter of principle to me and I truly do not understand Commissioner McCaskill's (a lay Commissioner) interpretation of the statute, regulations and caselaw. I appreciate your assistance and I look forward to hearing from you and/or Keith.

Sincerely yours,



Preston F. McDaniel

PFM/smk

cc: John Milling, Esq. (Via Email johnmilling@bellsouth.net)
Keith Roberts (Via email kroberts@wcc.sc.gov)
Pam Cartee (Via email)

Roberts, Keith

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Thursday, March 15, 2018 4:49 PM
To: Bracy, Amy
Cc: Roberts, Keith; 'John Milling'; 'Pamela Cartee'; preston@pfmcdlaw.com
Subject: RE: Cartee File No 1307922

Amy,

Thank you for your email, but the reason I sent it to Keith Roberts also is I would request an opinion from the General Counsel for the Commission. The defendants are not a "party" to my fee contract with my client which is the subject of this dispute at the Commission. There is no question that this situation involves issues of client confidentiality and interference with contract. Further, this is a very sticky situation in that we have a non-lawyer Commissioner refusing to approve our attorney's fees based on his legal interpretation of the law. In my opinion on December 5th if he disagreed with the law and fee requested, he should have immediately notified Judge Milling and I of the question, notified us that he was seeking a legal opinion from Keith in accordance with ethics requirements and then we could have proceeded accordingly. For those reasons, I would specifically ask Keith to send me a letter, if I am directed to serve the defendants, notifying me that that is in accordance with the statutes/regulations and the S.C. Rules of Professional Conduct, Rule 1.6 and 1.5. If in the legal opinion of the Commission I am required to serve the defendants, I will be glad to do so.

Finally, to help resolve this issue I believe the proper caption of this matter for, which would resolve the service issue should be:

Preston F. McDaniel and John Milling, Attorneys at Law

v.

SCWCC

In re: Pam Cartee v. the SC Judicial Dept and the State Accident Fund .
Disputed Fee Request

If Keith agrees that would resolve this immediate issue.

I look forward to Keith's reply. I am just trying to make sure that we don't get anyone in trouble and we do not violation any contract or ethics rights in the process. Again, thanks for your prompt reply. By copy of this email, I am sending a copy to my co-counsel and client.

-Preston

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211

Fax : (803) 252-0709

Please "Reply to All" when responding

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From: Bracy, Amy [mailto:abracy@wcc.sc.gov]
Sent: Thursday, March 15, 2018 11:14 AM
To: Sabrina Kelley <sabrina@pfmcdlaw.com>
Cc: Roberts, Keith <keroberts@wcc.sc.gov>; John Milling <johnmilling@bellsouth.net>; 'Pameja Cartee' <pocartee@gmail.com>
Subject: RE: Cartee File No 1307922

Mr. McDaniel;

If you file a WCC Form 30 appealing an award of attorneys' fees, the Commission will set the matter for a Hearing in accordance with Section 42-17-50. All parties of record, and the Claimant individually, should be served with any appellate documents.

Sincerely,

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
1333 Main Street
Columbia, SC 29201
803-737-5672

Roberts, Keith

From: Sabrina Kelley <sabrina@pfmcdlaw.com>
Sent: Friday, March 23, 2018 12:21 PM
To: Roberts, Keith
Subject: Pam Cartee WCC 1307922 - Fee Dispute

See below from Preston:

Dear Keith:

I plan on filing a Declaratory Judgment action in Darlington County the first of next week concerning the refusal to award a portion of our attorney's fees requested in December 2017, and denied March 8th based on Commissioner McCaskill's "legal opinion". Would you please let me know whether or not the Commission will accept service on the DJ action to avoid the service fee expense once filed?

Keith I would also appreciate a written reply concerning the ethics issue in reference to the Regulation (not Statute) requirement that a Form 30 be served on the parties since this is an Appeal of a Disputed Attorneys Fee issue which is an issue between my client and me subject only to the statutory requirement of the Commission's authority to approve my attorney's fee. I believe the Regulation if we interpret it requires service on the defendants in an Appeal over an Attorney's Fee Dispute places any lawyer in an ethical bind. As an alternative to your opinion, I would appreciate a call to discuss possibly obtaining an ethics opinion from one of the ethics professors to help all of us.

Sorry to put all of us through this but this is the first time in 42 years I have ever had my fee request questioned.

I look forward to hearing from you.

-Preston

Thanks,

Sabrina M. Kelley, Paralegal to
Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave
Columbia, SC 29201
Telephone : (803) 771-7211
Fax : (803) 252-0709

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Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

May 31, 2018

Eugenia Hollmon - ehollmon@wcc.sc.gov
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: Pamela Cartee v. SC Judicial Department
WCC File No. 1307922

Dear Eugenia:

I am in receipt of the Full Commission Decision and while Mr. Milling and I will be filing a Petition for Re-Hearing w/in 30 days, I believe a revised order needs to be filed and served as there are several corrections that need to be made under "appearances" and throughout the Order where it only lists me, Preston F. McDaniel on his own behalf whereas both I and my co-counsel, the Honorable John M. Milling, Esq, both appeared at the Hearing and are both the attorneys and Petitioners requesting approval of the balance of our attorney's fees by the Full Commission. The order needs substantial revision in that regard alone.

Most importantly I do not see where Mr. Milling was served.

First, I would appreciate it if I could be forwarded a copy of the vote sheets with any notes as is provided for by the Regulations.

Next, the Order reflects that Commissioner McCaskill requested En Banc consideration by the Commission whereas by written email after my inquiry, I was advised that the reason this matter was set En Banc was because it is "Commission Policy" in reference to attorney fee disputes and that Commissioner McCaskill had not made the request. In my inquiry I had specifically asked for the written request if it had been made by Commissioner McCaskill pursuant to Reg. 67-709 (B) (1) and my understanding of the Regulations.

In that regard I would appreciate either a copy of the Commission policy of hearing all attorney fee disputes En Banc or a copy of Commissioner McCaskill's written request for an En Banc Hearing. I will be glad to forward to you, if you can't find it, my original email request concerning why this matter was set En Banc and the Commission's reply.

Eugenia Hollmon
May 31, 2018
Page 2

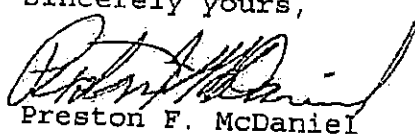
Also, since multiple members of the Commission staff were present during the Hearing including General Counsel and the Commission Judicial Director, I would appreciate it if I could be advised or forwarded a copy of the Court Reporter's notations as to who was present during the argument.

I look forward to hearing from you and as to whether or not a revised Order will be served; again specifically, since the Order as written is inaccurate in that Mr. Milling and I both requested approval of the attorney's fees and Mr. Milling and I were both the Petitioners in this matter.

Finally I previously requested being advised as to whether or not pursuant to Statute (42-17-40) a copy of the Hearing Transcript before the Hearing Commissioner was made a part of the Record.

I look forward to hearing from you soon.

Sincerely yours,



Preston F. McDaniel

PFM/smk
Enclosure

Sabrina Kelley

From: Bracy, Amy <abracy@wcc.sc.gov>
Sent: Friday, June 1, 2018 4:25 PM
To: preston@pfmcdlaw.com; Sabrina Kelley
Subject: Pamela Cartee, 1307922
Attachments: Cartee votesheet.docx.pdf

Dear Mr. McDaniel:

We are in receipt of your letter dated May 31, 2018. Please allow this to serve as a response.

Mr. Milling was not served with a copy of the Decision and Order as he was neither a party to the December 8th, 2017 Form 61 Fee Petition nor the March 20th, 2018 Form 30 Request for Full Commission Review. We are happy to send him a copy of the Decision and Order.

Pursuant to your request, enclosed please find copies of the Vote Sheets completed in accordance with Reg. 67-709(C).

Regarding your request for copies of Commission policy regarding fee disputes or a copy of Commissioner McCaskill's written request for *En Banc* Hearing, the Commission has never adopted its policy in writing but rather follows this policy in practice, and Commissioner McCaskill made his request for *En Banc* review verbally.

If you would like information regarding the transcript, you must request a transcript from the Court Reporter directly.

Amy Bracy, Judicial Director
SC Workers' Compensation Commission
1333 Main Street
Columbia, SC 29201
803-737-5672

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: FC
Attorney: FC

☐ AFFIRM

☐ REVERSE

☐ AFFIRM with Amendments:

☐ VACATE

☒ AFFIRM in Part/REVERSE in Part

- See written opinion.

☐ REMAND

Before me dated: 5-30-2018
Columbia, SC

Signed: Melinda L. James
Commissioner

THIS DOCUMENT CONTAINS THE PERSONAL NOTES OF THE ADJUDICATORY OFFICER CREATED FOR HIS OR HER OWN
CONVENIENCE TO ASSIST IN REACHING THE DECISION THAT WILL BE EMBODIED IN THE EXECUTED DECISION AND
ORDER AND IS NOT AN OFFICIAL RECORD

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: Full Commission
Attorney: Full Commission

☐ AFFIRM

☐ REVERSE

☐ AFFIRM with Amendments:

☐ VACATE

☒ AFFIRM in Part/REVERSE in Part
- See written opinion.

☐ REMAND

Before me dated: 5/30/2018
Columbia, SC

Signed: _____
Commissioner

THIS DOCUMENT CONTAINS THE PERSONAL NOTES OF THE ADJUDICATORY OFFICER CREATED FOR HIS OR HER OWN
CONVENIENCE TO ASSIST IN REACHING THE DECISION THAT WILL BE EMBODIED IN THE EXECUTED DECISION AND
ORDER AND IS NOT AN OFFICIAL RECORD

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: *Beck*
Attorney: *Roberts*

☒ AFFIRM

☐ REVERSE

☐ AFFIRM with Amendments:

☐ VACATE

☐ AFFIRM in Part/REVERSE in Part

☐ REMAND

Before me dated: 5/31/17
Columbia, SC

Signed: *[Signature]*
Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner:
Attorney:

☒ AFFIRM

☐ REVERSE

☐ AFFIRM with Amendments:

☐ VACATE

☐ AFFIRM in Part/REVERSE in Part

☐ REMAND

Before me dated: 5/21/18
Columbia, SC

Signed: Gene McCaskill
Commissioner

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner: Back
Attorney: _____

☒ AFFIRM

____ REVERSE

____ AFFIRM with Amendments:

____ VACATE

____ AFFIRM in Part/REVERSE in Part

____ REMAND

Before me dated: 5-23-2018
Columbia, SC

Signed: _____
Commissioner

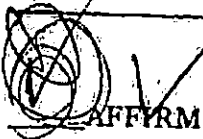
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
VOTE SHEET PREPARED PURSUANT TO R.67-709 (E)(2)

Pamela Cartee v SC JUDICIAL DEPT.
SCWCC : 1307922
COMMISSIONER: Gene McCaskill

Appellant: Preston F. McDaniel

Appellate Panel: Panel A
Publish Comments: Y/N
Separate Opinion: Y/N

Order assignment due in 30 Days
Commissioner:
Attorney:

 AFFIRM

____ REVERSE

____ AFFIRM with Amendments:

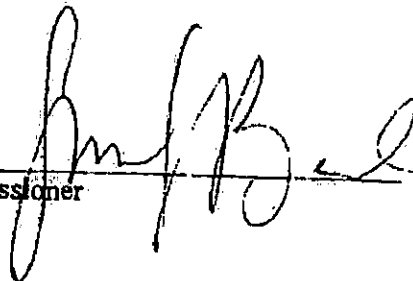
____ VACATE

____ AFFIRM in Part/REVERSE in Part

____ REMAND

Before me dated: _____
Columbia, SC

Signed: _____
Commissioner



State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

Workers' Compensation Commission

June 26, 2018

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave.
Columbia, SC 29201

Carrier Code No. 00500

Carrier File No. 2013001614

Re: WCC File No. 1307922
Pamela Cartee v. SC JUDICIAL DEPT.
Date of Injury: 03/01/2013

The enclosed Motion is being returned for the following reason(s):

The attached motion is being returned to you because it has been received untimely. Any motion for reconsideration must be made within five (5) days of the date that the order, opinion, or award is served. S.C. Code Ann. Regs. 67-215(B) (2018 Supp.); S.C. Document Number 4735, effective February 23, 2018. The final Decision and Order of the Full Commission was served electronically on you May 30, 2018 making the due date for the Motion June 4, 2018.

Once the hard copy is received the Motion and the filing fee will be returned promptly. Please let me know if you have any additional questions or concerns.

Sincerely,

Eugenia C. Hollmon
Judicial Docketing Director
803-737-5737

c:
Pamela O Cartee
1825 Woodbine Dr
Hartsville, SC 29550

JOHN M MILLING, Esquire
ATTORNEY AT LAW
PO Box 519
DARLINGTON, SC 29532-3216

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2023-000187

Pamela Cartee, Claimant,

v.

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

RECEIVED

DEC 19 2023

SC Court of Appeals

In Re:

Attorney's Fee Petition of Preston F. McDaniel,
Esquire, and John M. Milling, Esquire,Appellants,

v.

SC Workers' Compensation Commission,Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal
contains all material proposed to be included by any of the
parties and not any other materials.

Respectfully submitted,



Preston F. McDaniel, Esquire
SC Bar #3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

John M. Milling, Esquire
SC Bar #3994
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083

Attorneys and Appellants

December 19, 2023