THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

W.C.C. File No. 0725187

Appellate Tracking No. 2012-211392

George W. Thomas,

Respondent,

v.

5 Star Transportation,

Appellant,

and

S.C. Uninsured Employer's Fund.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

The Respondent is satisfied with the Appellant's Statement of the Case.

FACTS

The Decedent was married for the first time to Gloria Thomas. They had two grown children neither of whom were dependent on the Decedent at the time of his death. The Decedent was divorced from Gloria Thomas at the time of his third marriage to Barbara Thomas. They had one grown child who was not dependent on the Decedent at the time of his death. The Decedent and Emily Thomas got a marriage license and participated in a marriage ceremony at the courthouse on September 19, 2006. (R. p. 230) Emily Thomas testified, "He had told me he had his divorce and he wanted to get married." (R. p. 122). The Decedent was not divorced from Barbara Thomas, however, until February 9, 2007. (R. pp. 226 - 229). The Decedent and Cynthia Thomas had no children. Cynthia Thomas did not learn the Decedent's divorce from Emily Thomas was not final at the time of their marriage until the dependency investigation was performed after the Decedent's death. (R. p. 130). The dependency investigation found no evidence the other marriages or other minor, dependent children. (R. p. 8).

After the Decedent was divorced, the Decedent and Emily Thomas continued to hold themselves out to be husband and wife to their family, friends, social acquaintances, and businesses. Emily Thomas, Joseph Mazyck, and Janita Anderson.

Anderson testified at the hearing the Decedent and Emily Thomas referred to each other as husband and wife. (R. pp. 157 - 158). When Emily Thomas would accompany and assist the Decedent on bus trips, the Decedent would introduce her to the passengers on the bus as his wife. (R. p. 158). Emily Thomas was named as the Decedent's wife on the death certificate. (R. p. 225). Emily Thomas was named as the Decedent's wife on the funeral announcement and paid for the Decedent's funeral. (R. pp. 231 – 233). Emily Thomas changed her name on her bank accounts, insurance polices, and tax records to reflect her marriage. Emily Thomas and the Decedent bought a home security system as husband and wife. And, Emily Thomas receives partial Social Security benefits based on the Decedent's earnings as his wife. (R. pp. 132 - 133).

On November 19, 2007 the Decedent was driving a bus in the course of his employment with 5 Star on Interstate Highway 26. The bus ran off the highway and collided into a tree. The Decedent was pronounced dead at the scene before he could be extricated from the wreckage. (R. p. 223). The autopsy was performed by Dr. Cynthia A. Schandl, M.D., Ph.D. (R. pp. 213 - 221). The autopsy states, "[The Decedent] was apparently witnessed to slump over and become unresponsive prior to driving off the road." (R. p. 213). Dr. Schandl stated her opinion, "[t]o a reasonable degree of medical certainty, the cause of death in this case is full body blunt trauma complicating ruptured saccular aneurysm of the brain." (R. p. 213).

The blunt force trauma caused a "partial aortic transection, spinal transaction at thoracic vertebrae 5 – 6, multiple fractures (left femur, left and right tibia and fibula, ribs, sternum, pubic symphysis, skull), bilateral hemothoraces (bleeding into the pleural cavities), liver lacerations with maceration, lung maceration with hemorrhages into the lung and fat embolization into the lung vasculature, skin and soft tissue hemorrhages, and skin incisions, lacerations and abrasions." (R. pp. 201 - 202). Dr. Schandl testified in her deposition, "... there are so many different fatal injuries at that moment of the crash that it's difficult to sort out which one would have made him more dead." (R. p. 80). Dr. Schandl could not state whether the ruptured cerebral aneurysm occurred before or as a result of the collision, "however, to a reasonable degree of medical certainty, this condition did not cause death." (R. p. 202) Dr. Schandl testified, "As far as what contributions the ruptured aneurism provided, this is very unclear to me and uncertain." (R. p. 82). Dr. Schandl explained in her deposition, even if the ruptured cerebral aneurysm preceded the collision, it would not have been immediately life threatening and two-thirds (2/3's) of patients with the same rupture would have survived. (R. p. 80). Dr. Schandl concluded, "...to a reasonable degree of medical certainty, [the Decedent] died as a result of injuries sustained in a motor vehicle collision." (R. p. 202).

ARGUMENT

Judicial review of the decisions of the Workers' Compensation Commission is governed by § 42-17-60, S.C. Code Ann., 1976, of the Workers' Compensation Act, and § 1-23-380(g), S.C. Code Anno., 1976, of the Administrative Procedures Act. The reviewing court may only "reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are ... affected by other error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record..." *See:* Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (S.C. 1981). The substantial evidence required to support a finding is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action. Etheredge v. Monsanto Co., *supra.*; Gibson v. Spartanburg School District #3, 338 S.C. 510,526, S.E.2d 725 (S.C.App. 2000).

I. The Commission's findings of fact and rulings of law that the Decedent's death arose out of and in the course of his employment were not affected by an error of law and were supported by substantial evidence.

In the Findings of Fact the Appellate Panel found:

> FIFTH: The decedent suffered compensable injuries on November 19, 2007. On that date he was performing services for 5 Star as a bus driver. Although it is impossible to determine whether the decedent suffered a ruptured aneurism before or after the wreck, the evidence is that he probably would have survived the ruptured aneurism. What caused his death was most probably the blunt force trauma suffered in the wreck. The decedent was driving at a high speed on an interstate highway and, therefore, was exposed to an increased risk of injury in the event he suffered a physical condition causing him to lose consciousness.

(R. pp. 7 - 8). In the Conclusions of Law the Appellate Panel ruled:

> SIXTH: As a general rule, injuries attributable to risks or conditions personal to the employee do not arise out of the employment unless the employment contributes to the risk or aggravates the injury. When the employment places the employee in a position of increased danger such as working above ground, near operating machinery, sharp objects, or in a moving vehicle, and the resulting injury is aggravated or worsened by such increased danger, then the resulting injury may be deemed compensable. This is called the increased danger rule. Larson, Workers' Compensation Law § 9.01. South Carolina has applied the increased danger rule in claims involving falls caused by non-occupational heart attacks, epileptic seizures, or fainting spells. In such cases, the Court has held employment which places the employee in a position that increases the dangerous effects from a fall is compensable. Bagwell v. Ernest Burwell, Inc., [237 S.C. 444, 88 S.E.2d 611 (S.C. 1955); *see also*: Allred v. Allred-Gardner, Inc., 117 S.E.2d 476 (N.C. 1960)(injuries sustained in a motor vehicle after the claimant blacked out held compensable). In Crosby v. Wal-Mart Store, Inc., [330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998), the Court cited Larson and explained the increased danger rule by stating, "Where an employee suffers an idiopathic fall when standing on a level surface, and in the course of the fall, hits no machinery, furniture, or other object such as would contribute to the effect of the fall, the majority of jurisdictions deny compensation." The decedent's [death] arose out of and in the course of his employment because he [was] placed in an increased danger while he was driving a bus at a high rate of speed down the interstate highway. The multiple, fatal injuries suffered by the decedent attest to the increased danger.

(R. pp. 11 - 12).

The Appellant first argues the Appellate Panel's decision is effected by an error of law because, since Dr. Schandl could not state to a reasonable degree of medical certainty whether the Decedent's ruptured aneurism occurred before or as a

result of the collision, the Respondent's proof failed to meet the standard of expert testimony required in "medically complex cases." See: §42-1-160(E) and (G), S.C. Code Anno., as amended 2007. This argument is based on the premise the Decedent died as a result of a ruptured aneurism. While it is true the autopsy revealed the Decedent had suffered a ruptured aneurism, it was not possible to tell whether the aneurism ruptured before or as a result of the collision. Dr. Schandl could not state whether the ruptured cerebral aneurysm occurred before or as a result of the collision, "however, to a reasonable degree of medical certainty, this condition did not cause death." (R. p. 202) Dr. Schandl testified, "As far as what contributions the ruptured aneurism provided, this is very unclear to me and uncertain." (R. p. 82). Although the autopsy reported the Decedent was observed to slump over before the collision, **Dr. Schandl testified this could have been for numerous reasons including he could have simply fallen asleep.** (R. p. 76) Dr. Schandl further explained in her deposition, even if the ruptured cerebral aneurysm preceded the collision, it would not have been immediately life threatening and two-thirds (2/3's) of patients with the same rupture would have survived. (R. p. 24).

What the Respondent sought to prove and did prove to a reasonable degree of medical certainty was that the Decedent died as a result of the blunt force trauma he sustained in the collision. As Dr. Schandl explained, "... there are so many different fatal injuries at that moment of the crash that it's difficult to sort out which one would have made him more dead." (R. p. 80. Dr. Schandl met the required burden of proof when she testified, "...to a reasonable degree of medical certainty, [the Decedent] died as a result of injuries sustained in a motor vehicle

collision." (R. p. 202).

The Appellant further argues the Appellate Panel "compounded its error" when it cited the decisions in Crosby, *supra.*, and Bagwell, *supra.*, as supporting a ruling of compensability based on the increased danger rule. Both cases involved falls to a level floor. The Courts in both cases noted the absence of any increased danger inherent in level surfaces which would qualify them as hazardous conditions under the special danger rule. The Appellant fails to give effect to the language in Bagwell, *supra.,* discussing the special danger rule:

> Our conclusion that claimant has failed to show any causal connection between the fall of deceased and his employment does not, as respondent's counsel seems to think, end our inquiry. There remains for determination whether the fall bore with it such consequence as would not have occurred except for the employment. In other words, we must inquire whether the employment contributed to the effect of the fall. 'If, except for the employment, the fall, though due to a cause not related to the employment, would not have carried the consequences it did, then causal connection is established between injury and employment, and the accidental injury arose out of the employment. The employment has subjected the workman to a special danger which in fact resulted in injury.' Connelly v. Samaritan Hospital, 259 N.Y. 137, 181 N.E. 76, 78.

The Appellant would have this Court end its inquiry with their presumed cause of the injury being a ruptured aneurism and ignore the obvious special danger inherent in driving a multi-ton bus down an interstate highway.

This issue was discussed at some length in the recent decision of Nicholson v. S.C. Dept. of Social Services, Opinion No. 5171 (Ct. App., September 4, 2013). In *Nicholson* the employee was awarded benefits when she tripped walking on a level

carpeted floor. On appeal the employer argued the claim should have been denied under the "increased-risk doctrine" because the employee was not subjected to a greater danger from a level carpeted floor than the general public. Court of Appeals acknowledged, "The increased-risk doctrine is the prevalent doctrine in the United States. Mark A. Rothstein *et. al.*, *West's Employment Law* § 7.18 (4th ed. 2009). However, a majority of courts that have recently addressed the issue of whether compensation should be awarded to employees who have suffered non-idiopathic falls have adopted the positional-risk doctrine, with a minority of jurisdictions employing the actual-risk doctrine." The Court of Appeals explained the different doctrines under the "arising out of" requirement:

> Courts have taken various approaches to interpreting the "arising out of" requirement. Simmons v. City of Charleston, 349 S.C. 64, 71, 562 S.E.2d 476, 479 (Ct. App. 2002) (citing 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 3.01 (2001)). The three most commons lines of interpretation of the phrase "arising out of" are: (1) the increased-risk doctrine; (2) the positional-risk doctrine; and (3) the actual-risk doctrine. *Id.* Under the increased-risk doctrine, an injury arises out of employment when the employment increases the risk of an injury. *Id.* The positional-risk doctrine provided that "'[a]n injury arises out of the employment if it would not have occurred but for the fact that the conditions and obligations of the employment placed the claimant in the position where he was injured.'" *Id.* at 71, 562 S.E.2d at 479 (quoting 1 Larson § 3.05). The actual-risk doctrine ignores whether the risk is common to the public and focuses on whether it is a risk of the particular employment. Id. at 71, 562 S.E.2d at 479 – 80 (citing Larson § 3.04). Under this doctrine, an injury arises out of employment as long as the employment subjected the claimant to the actual risk that caused the injury. *Id.* at 71, 562 S.E.2d at 480.

The Court of Appeals went on, however, and noted South Carolina has not formally adopted or rejected any of the three doctrines. Instead, the Court of Appeals stated

in order for an injury to arise out of the employment under South Carolina law, "a causal connection must exist between the conditions under which the work is required to be performed and the resulting injury." Ervin v. Richland Memorial Hospital, 386 S.C. 245, 249, 687 S.E.2d 337, 339 (Ct. App. 2009).

> [I]f the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965).

No matter how the "arising out of" requirement the special danger doctrine are described, the facts of this case fit the bill. Naturally incident to driving a multi-ton bus at highway speeds brings are the increased, positional, and actual risk of serious blunt force trauma in the event of a collision. Unlike walking on a level carpeted floor, it is a risk fairly traced to the employment of a bus driver to which the general public is not equally exposed. A risk connected to and flowing as a natural consequence from the employment that would have been immediately apparent to any reasonable person who witnessed the emergency responders trying to extricate the Decedent from the wreckage on the side of the highway.

As noted in Nicholson, *supra.*, the question of whether an injury arises out of the employment is largely a question of fact for the Commission. *See*: Ervin, supra. 386 S.C. at 249, 687 S.E.2d at 175. The Appellate Panel's fifth finding of fact and sixth ruling of law were not affected by an error of law and were supported by substantial evidence. The Decision of the Appellate Panel that the Decedent's death arose out of and in the course of his employment should be affirmed.

II. **The Commission's findings of fact and ruling of law that Emily Thomas is the surviving common law wife of the Decedent were not affected by an error of law and were supported by substantial evidence.**

In the Findings of Facts the Appellate Panel found:

> SEVENTH: The decedent and Thomas participated in a ceremonial marriage on September 19, 2006. At the time of their marriage the decedent had not yet obtained a divorce from Cynthia Whaley. The decedent and Cynthia Whaley were not divorced until February 9, 2007. At the time of the ceremonial marriage, there is no evidence Thomas was [sic] unaware the decedent had not yet obtained a divorce from his former wife. Thomas testified she did not become award of this fact until after the decedent's death. Thomas believed she had entered into a valid, lawful marriage with the decedent.
>
> * * *
>
> NINTH: After the decedent was divorced from Cynthia Whaley on February 9, 2007, both he and Thomas held themselves out to the public as husband and wife. The decedent would introduce Thomas to social friends as his wife. The decedent and Thomas frequented a social club, "The Fleet Reserve" in North Charleston, South Carolina, where decedent referred to Thomas as his wife to fellow club members. Thomas accompanied the decedent on several bus trips after the decedent's divorce from Cynthia Whaley. The most recent trip occurred in September or October of 2007, just a few weeks prior to the decedent's death. Thomas would serve snacks and drinks to the passengers during the trips. The decedent would introduce Thomas to the passengers on the trips as his wife over the bus intercom

system. The decedent and Thomas entered into a contract with A.P.X. Alarm Security Solutions on May 17, 2007. The contract referred to the purchasers as George and Emily Thomas, 5726 Hoover Avenue, North Charleston, South Carolina.

TENTH: The decedent and Thomas were common law husband and wife at the time of the decedent's death. After the decedent's divorce from Cynthia Whaley, they held themselves out to the public, social friends, tour bus passengers, and businesses as being husband and wife. The Social Security Administration recognized Ms. Emily Thomas as being entitled to widow's benefits despite being made aware Mr. Thomas was not divorced at the time of his marriage to Emily Thomas. Thomas had no knowledge that the decedent's divorce from his prior wife was not final and participated in a ceremonial marriage entirely in good faith...

(R. pp. 6 - 8). In the Conclusions of Law the Appellate Panel ruled:

NINTH: A party claiming a common-law marriage must prove the existence of the marriage by the preponderance of the evidence. Ex Parte Blizzard, 193 S.E. 633 (S.C. 1937). The difference between marriage and concubinage rests in the intent of the co-habitating parties. The intent to marry is usually evidenced by the public and unequivocal declaration of the parties, but that is not necessary. The intent to be married may be inferred from the circumstances. Kirby v. Kirby, 270 S.C. 137, 140, 241 S.E. 2d 415, 416 citing Fryer v. Fryer, 9 S.C.Eq. (Rich. Eq. Cas.) 85; String Fellow v. Scott, 9 S.C. Eq. (Rich. Eq. Cas.) 109.

TENTH: In South Carolina, a relationship elicit in its inception does not ripen into common-law marriage once the impediment to marriage is removed. A bigamous marriage is void from its inception and, therefore, cannot be ratified and made valid. S.C. Code Ann. § 20-1-80 (1976). In order for a common-law marriage to arise after the impediment is removed, the parties must intend and agree to enter into a common-law marriage after the impediment is removed. Such intent and agreement may be inferred from the circumstances. Prevatte v. Prevatte, 377 S.E.2d 114,, 116 (S.C. Ct. App. 1989); Yarborough v. Yarbrough, 314 S.E.2d 16, 19 (S.C. Ct. App. 1984).

> ELEVENTH: The preponderance of the evidence supports a ruling that the decedent and Thomas intended to and agreed to be married after the decedent was divorced from Cynthia Whaley. This evidence is found in the decedent and Thomas holding themselves out to the public, social friends, tour bus passengers, and contracting as husband and wife. It is also found from the Social Security Administration recognizing their marriage.

(R. pp. 12 - 13).

The Appellate Panel found the preponderance of the evidence established the Decedent and Emily Thomas agreed, intended, and held themselves out to be married after the Decedent's divorce became final. A common law marriage is formed when two parties mutually agree to be married. Johnson v. Johnson, 235 S.C. 542, 550, 112 S.E.2d 647, 651 (1960). No formality is required and the agreement to be married may be inferred under South Carolina law:

> No express contract is necessary; the agreement may be inferred from the circumstances. The fact finder is to look for mutual assent: the intent of each party to be married to the other and the mutual understanding of each party's intent. Consideration is the participation in the marriage. If these factual elements are present, then the court shall find as a matter of law that the common-law marriage exists. Further, when the proponent [of the common-law marriage] proves that the parties participated in "apparently matrimonial" co-habilitation, and that while co-habitating the parties had a reputation in the community as being married, a rebuttable presumption arises that a common-law marriage was created.

Callen v. Callen, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005).

The Appellant argues the Appellate Panel's ruling was affected by an error of law because Emily Thomas never knew of the impediment and, therefore, could never have agreed or intended to enter into a common law marriage after the

impediment was removed. The Appellant cites no authority that such knowledge is required. This issue was discussed by Judge Hearn in Prevatte v. Prevatte, 297 S.C. 345, 377 S.E.2d 114 (Ct. App. 1989):

> In South Carolina, however, "[a] relationship illicit at its inception does not ripen into a common law marriage once the impediment to marriage is removed. Instead, the law [in this State] presumes that the relationship retains its illicit character after removal of the impediment. In order for a common law marriage to arise, the parties must agree to enter into a common law marriage after the impediment is removed, though such agreement may be gathered from the conduct of the parties." Yarborough v. Yarbarough, 280 S.C. 546, 551, 314 S.E.2d 16, 19 (Ct. App. 1984) (*citations omitted*). South Carolina has not been alone in following this presumption. (*citations omitted*).
>
> There appears to be a split of authority among the states requiring an agreement after removal of the impediment as to whether the parties must have knowledge that the impediment has been removed. Some of the earlier cases required knowledge of the removal of the impediment. The court, in many of these cases, reasoned that unless the parties had such knowledge, there could be no agreement following the removal of the impediment. *E.g.* Cartwright v. McGown, 121 Ill. 388, 12 N.E. 737 (1887); Rice v. Randlett, 141 Mass. 385, 6 N.E. 238 (1886); *Compton v. Benham*, 44 Ind. App. 51, 85 N.E. 365 (1908). Other courts have expressly rejected knowledge that the impediment has been removed as a criterion in deciding such cases. *E.g.* Hess v. Pettigrew, 261 Mich. 618, 247 N.W. 90 (1933); *In re Wells*, 123 App. Div. 79, 108 N.Y.S. 164 (1908), *aff'd* 194 N.Y. 548, 87 N.E. 1129 (1909). We need not decide here which of these views to adopt.

The reason the Court did not feel it was necessary to decide which line of authority to follow was because after the impediment was removed both alleged they were married in in Court pleadings. The Appellate Panel found Emily Thomas and the Decedent gave every indication they agreed, intended, and held them selves out to be husband and wife after the Decedent's divorce was granted the impediment to their marriage in fact removed.

This Court should decline to adopt a rule requiring knowledge the removal of an impediment before a common law marriage can be entered into to prevent a gross inequity. The adoption of such a rule would result in an innocent spouse, who married in good faith believing their marriage to be lawful and valid, receiving less protection under the law than a spouse who entered into a bigamous marriage knowing it was illegal and void from the outset. Only the later less deserving spouse could ever receive the benefits of a common law marriage once the impediment to marriage was removed.

The Appellate Panel's findings of fact and conclusions of law the Decedent and Emily Thomas agreed and intended to be common law husband and wife were not affected by an error of law and were supported by substantial evidence. The Decision of the Appellate Panel should be affirmed.

III. **The Commission properly recognized and applied the putative marriage doctrine granting the civil benefits of a marriage to an innocent spouse who entered into the marriage in good faith believing it to be legal and valid.**

The Respondent acknowledges that since the Appellate Panel's decision, the filing of this appeal, and indeed the draft of the Respondent's Initial Brief, the South Carolina Supreme Court issued its decision in Hill v. Bert Bell, *et. al.*, Opinion No. 27308 (filed August 28, 2013) declining to adopt the putative spouse doctrine as contrary to South Carolina statutory law and marital jurisprudence. *See*: § 20-1-10, S.C. Code Anno. (Supp. 2012); Lukich v. Lukich, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006); Day v. Day, 216 S.C. 334, 58 S.E.2d 83 (1950); Howell v. Littlefield, 211 S.C. 462, 46 S.E.2d 47 (1947). The Respondent has no desire to belabor the point but would note, as argued in Question II above, it is not contrary

to South Carolina statutory law and marital jurisprudence for parties to contract to marry by words or conduct after a prior marriage is dissolved by judicial decree. If it is not contrary to South Carolina statutory law and marital jurisprudence for parties to contract to marry by words or conduct after a prior marriage is dissolved by judicial decree, then what policy is served by depriving an innocent spouse of the benefits of marriage under the same circumstances? It is not the purpose of the putative marriage doctrine to validate a void marriage but rather, as noted by Judge Hearn in Lovett v. Lovett, 329 S.C. 426, 494 S.E.2d 823 (Ct. App. 1997), *cert. denied,* the purpose of the doctrine is to provide "a spouse who believed in good faith that he or she was validly married, and who has participated in a ceremonial marriage, is allowed the civil effects of a valid marriage even though the marriage is found to be void due to an impediment." *Id.*, 494 S.E.2d at 826.

> The classic putative marriage doctrine is substantive, ameliorative or corrective; it is designed to allow all the civil effects-rights, privileges, and benefits-which obtain from a legal marriage to flow to parties to a null marriage who had a good faith belief that their 'marriage' was legal and valid. Most jurisdictions in the United States have developed equitable analogues to the putative spouse doctrine that provide all or part of the relief afforded by the classic doctrine.

Christopher L. Blakesley, The Putative Marriage Doctrine, 60 TUL. L. REV. 1, 2 (1985). It is respectfully submitted the Supreme Court painted with too broad a brush and did not consider whether the putative marriage doctrine should apply in cases, such as this one, when the prior marriage had been dissolved by judicial decree.

The Appellate Panel found as a matter of fact Emily Thomas acted in good faith and believed she was legally married to Decedent. She did not know the Decedent was still married at the time of her marriage to him on September 19, 1996. And that by their conduct they agreed, intended, and held themselves out to be husband and wife after the Decedent was divorced from Cynthia Thomas on February 9, 2007. The Decision of the Appellate Panel recognizing and applying the putative marriage under these facts to grant the Emily Thomas the benefits under the Workers' Compensation Act should be affirmed.

CONCLUSION

The Appellate Panel's findings of fact and conclusions of law the Decedent's death arose out of and in the course of his employment were not affected by an error of law, were supported by substantial evidence, and should be affirmed. The Appellate Panel's findings of fact and conclusions of law the Decedent and Emily Thomas agreed, intended, and held themselves out to be husband and wife after the Decedent's unknown impediment was removed were not affected by an error of law, were supported by substantial evidence, and should be affirmed. The Appellate Panel's Decision recognizing and applying the putative marriage under the facts of this case to grant to grant the civil benefits of a marriage to Emily Thomas should

be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I certify that this 13 day of November, 2013 that I have served a copy of FINAL BRIEF OF RESPONDENT upon counsel of record by mailing same, postage prepaid in the United States mail addressed to the following:

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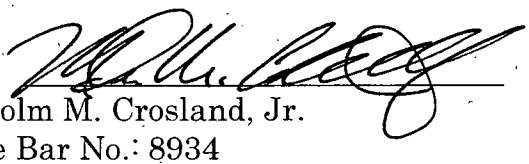
By: 

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent and Appendix complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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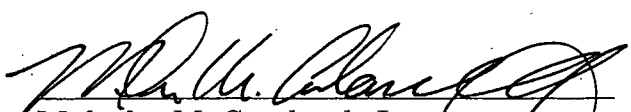

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