

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Honorable Melody L. James, Commissioner  
W.C C File No. 1209379

**RECEIVED**  
DEC 15 2014  
**SC Court of Appeals**

Appellate Case No 2014-002069


Chris Chapman... Respondent,

v

Georgia-Pacific, Self-Insured Employer... Respondent,

Rakesh Chokshi, M D. Appellant.

**INITIAL BRIEF OF APPELLANT**



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## STATEMENT OF ISSUES ON APPEAL

- I. DID THE COMMISSION ERR IN DETERMINING THAT A TREATING PHYSICIAN'S DEPOSITION IS SUBJECT TO THE FEE SCHEDULE REGARDLESS OF WHETHER THE CASE IS ADMITTED BY AN EMPLOYER?
- II IF THE PHYSICIAN'S SERVICES HAVE NOT BEEN AUTHORIZED, IS THE PHYSICIAN ENTITLED TO ESTABLISH AND ENFORCE HIS OWN REASONABLE FEE FOR HIS DEPOSITION AS AN EXPERT UNDER THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

## STATEMENT OF THE CASE

This case arises out of medical evaluation and treatment Rakesh Chokshi M.D. ("Appellant") provided to Respondent Chris Chapman's ("Claimant") on October 2, 2012. Ten months later, on August 12, 2013, Respondent Georgia-Pacific ("Employer") filed a motion to compel Appellant to provide his deposition pursuant to the South Carolina Workers' Compensation Commission 2010 Medical Services Provider Manual Fee Schedule ("Fee Schedule") and accept a fixed fee to offer testimony pertaining to Claimant's injuries in this workers' compensation case. Appellant was first made aware that his treatment of Claimant was associated with a workers' compensation claim on or about April 10, 2013 when Employer issued a Form 14B Physician's Statement to Appellant. The Form 14B unambiguously states

"The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§ 42-15-60, 42-1-172 or 42-11-10."

Although Appellant completed and returned the Form 14B to Employer, Employer refused to authorize Appellant's services. In effect, Employer excluded Appellant from providing any service or submitting any report to the Commission to assist it in the resolution of this workers compensation claim. Appellant never submitted a Form 14A for

payment to Employer. At all times, Appellant received payment for his services to Claimant under Claimant's group health insurance policy.

In July 2013, Employer scheduled Appellant's deposition in this workers' compensation case and informed Appellant that he would be compensated \$400.00 for the first hour and \$100.00 for each quarter hour thereafter pursuant to fixed fees in accordance with the Fee Schedule. In advance of the deposition, Appellant communicated to Employer that his fees for the deposition were accurately reflected in his standard deposition invoice because Appellant's services had not been authorized by Employer under the South Carolina Workers' Compensation Act ("the Act").

Under the 2010 Medical Services Provider Manual ("Provider Manual") the Fee Schedule allows for a physician's deposition to be compensated by individual consideration outside of the fixed fees offered by Employer. In determining payment by individual consideration, the payer is required to consider the prevailing charges for similar services. Appellant's fees are commensurate with fees charged by physicians for their depositions in state court proceedings. The fee is \$1,000.00 for the first hour and \$500.00 for each hour thereafter. Employer refused to take Appellant's deposition in accordance with Appellant's fees and the deposition was cancelled. Employer then filed the motion to compel Appellant's deposition pursuant to the Fee Schedule that is the subject of this appeal on August 12, 2013.

Because Appellant was not authorized by Employer or the Commission to perform any service under the jurisdiction of the Act and Title 42 of the South Carolina Code of Laws, Appellant respectfully requests that this Court find the Commission erred as a matter of law and reverse the Full Commission's Decision and Order finding that Appellant is bound to the fees mandated by Employer under the Fee Schedule. Appellant is entitled to

a reasonable fee as set forth in his standard deposition fee invoice under the South Carolina Rules of Civil Procedure

### FACTS

Appellant appeals the Decision and Order of the South Carolina Workers' Compensation Commission ("Commission") dated September 3, 2014 affirming the Decision and Order of Commissioner Andrea C. Roche dated January 27, 2014 granting Employer's Motion to Compel Appellant to provide his deposition pursuant to the Fee Schedule in this matter and its sister case, *William W Huggins, Jr v City of Mullins and S C Municipal Insurance Trust*, W.C.C File No. 1122484, Appellate Case No 2014-002070.

Claimant sustained a work-related accident on July 23, 2012 causing injury to his chest, ribs, lower back, and left leg. On October 2, 2012, Appellant performed low back surgery on Claimant at Pee Dee Orthopaedic Associates in Florence, South Carolina. Claimant was admitted, registered, and treated by Appellant under Claimant's group health insurance policy. Throughout the course of Appellant's treatment of Claimant, it was never disclosed to Appellant or to his office that Appellant's treatment of the Claimant was related to an injury compensable under the Act. Claimant was referred to Appellant by Claimant's family care provider

Over six months later, on or about April 10, 2013, Employer issued a Form 14B to Appellant requesting that he complete the form in regard to Claimant's injuries and impairment to his spine. The Form 14B is generated by the Commission and states

"The undersigned physician has been authorized by the Employer/Carrier to treat this Claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10 "

Appellant accepted \$64.00 as mandated by the Fee Schedule from Employer in exchange for completion of the Form 14B. Upon further review of his treatment and evaluation of Claimant, Appellant subsequently revised the form on May 9, 2013 from 0% impairment to 10% impairment to Claimant's spine. Employer, however, continued to deny authorization of Appellant's services and treatment to Claimant.

In or around July 2013, Employer contacted Appellant's office to schedule Appellant's deposition in this workers' compensation case to examine Appellant's evaluation of Claimant's injuries. Because Employer refused to authorize Appellant's services and treatment of Claimant, Appellant informed Employer before the deposition that the fee for Appellant's deposition was \$1,000.00 for the first hour and \$500.00 for each hour thereafter in accordance with Appellant's standard deposition fee invoice. The fees proffered by Employer pursuant to the Fee Schedule were \$400.00 for the first hour and \$100.00 for each quarter hour thereafter. For an eight-hour deposition, the difference between these fees is only \$1,300.00.

Appellant's office explained that if it were later determined that Appellant's services were determined to be compensable under the Act that Appellant would remit payment for his deposition to conform to the fixed fees established in the Fee Schedule for a physician's deposition. Employer responded stating that it would only pay the fixed fees for depositions set forth in the Fee Schedule. Because Employer had not authorized Appellant's services, Appellant cancelled the deposition upon Employer's refusal to pay Appellant's fee in accordance with his standard deposition fee invoice. Employer filed a motion to compel the deposition on August 12, 2013.

## ARGUMENT

### **THE COMMISSION ERRED AS A MATTER OF LAW THAT A TREATING PHYSICIAN'S DEPOSITION IS SUBJECT TO THE FEE SCHEDULE REGARDLESS OF WHETHER THE CASE IS ADMITTED BY AN EMPLOYER.**

Appellant requests that this Court reverse the Commission's Decision and Order finding that a treating physician's deposition in a workers' compensation case is subject to the Fee Schedule regardless of whether the Employer has authorized and admitted the physician's services. Because Employer never authorized Appellant's treatment of Claimant or entered into a contract with Appellant to compensate him for his medical services under the Act, the fixed fees contained in the Act's Fee Schedule do not control Appellant's compensation for his deposition. Appellant's completion of a Form 14B did not subject him to the jurisdiction of the South Carolina Workers' Compensation Act in this case because Employer continued to deny authorization for Appellant's services after Appellant completed the Form 14B. Appellant had no reasonable expectation that the Fee Schedule would control the fee for his deposition.

A physician's decision to be bound to the Act and its Fee Schedule for their services is voluntary. An employer or insurance carrier cannot refuse to authorize a treating physician's services on the belief that treatment is associated with a non-work related injury and then unilaterally bind the physician to fixed fees in the Fee Schedule for the sole purpose of collecting evidence in a workers' compensation case.

Here, Employer cannot refuse to authorize Appellant's services for Claimant's treatment under the Act and thereafter bind Appellant to a fixed fee under the Fee Schedule for Appellant's deposition. Appellant's compensation under the Fee Schedule is only proper when he has submitted to be bound by the Act and the employer has authorized his services or when it is determined that Appellant's services are related to a compensable

claim in a contested case by the Commission. Until authorization is given or a determination is made, compensation for Appellant's deposition requires individual consideration and payment of his own reasonable fee for such service.

Appellant's deposition is plainly sought to collect medical evidence pertaining to Claimant's injuries. Such testimony requires the special knowledge and skill of a medical expert. As a medical expert called upon to review the circumstances surrounding Claimant's injuries, Appellant is entitled to a reasonable fee for his deposition under the South Carolina Rules of Civil Procedure. Because Appellant's services were not authorized by Employer under the Act, the appropriate fee is reflected in Appellant's standard deposition invoice, not the Fee Schedule.

#### **STANDARD OF REVIEW**

The South Carolina Administrative Procedures Act sets forth the standard for judicial review of decisions by the Commission. S.C. Code Ann. § 1-23-380, Grant v. Grant Textiles, 327 S.C. 196, 200, 641 S.E.2d 869, 871 (2007); Lark v. Bi-Lo, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). Although the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, the Court may reverse a decision of the Commission if it is affected by an error of law or is clearly erroneous in view of the substantial evidence on the record as a whole. S.C. Code Ann. § 1-23-380. The Court may find the Commission's findings clearly erroneous if they are based on a mistaken view of the evidence. Grayson v. Carter Rhoad Furniture, 312 S.C. 250, 252, 439 S.E.2d 859, 860 (Ct. App. 1993).

**I. BECAUSE EMPLOYER NEVER AUTHORIZED APPELLANT'S TREATMENT OF THE CLAIMANT APPELLANT'S COMPENSATION FOR HIS DEPOSITION IS NOT CONTROLLED BY THE FEE SCHEDULE.**

Without the authorization of a physician's services by an employer or insurance carrier in a workers' compensation case, the Act and its Fee Schedule do not control compensation for the physician's services including his deposition. The Provider Manual<sup>1</sup> states:

“Medical Providers must receive authorization from the employer or insurance carrier prior to providing treatment . An employer who authorizes treatment, whether verbally or in writing, enters into a contract with the provider and is responsible for paying for that service, even if it is demonstrated later that the injury was not work-related.”

Once authorization is given, Title 42 of the South Carolina Code of Laws holds that a physician must provide reports required by the Commission before the physician can collect a fee pursuant to the Fee Schedule:

Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission, but a physician or hospital may not collect a fee from an employer or insurance carrier until the physician or hospital has made the reports required by the commission in connection with the case.

S.C. Code Ann § 42-15-90(A) Without authorization from the employer or insurance carrier permitting a physician to provide services, the physician cannot make reports required by the commission in connection with a workers' compensation case and cannot accept payment for his services under the Fee Schedule. The physician is excluded from the workers' compensation claims resolution process.

If a physician submits a Form 14A claim for payment of services to the employer or insurance carrier or completes and returns a Form 14B physician's statement with respect to his services, the physician offers to be bound to the Act's Fee Schedule for

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<sup>1</sup> See Ch II, p 7 Payment for services provided by physicians in accordance with the Provider Manual is regulated by 67 S C Code Reg §1302(A)(1) that states “The Commission shall establish maximum allowable payments for medical services provided by medical practitioners based on a relative value scale and a conversion factor set by the Commission The maximum allowable payments and any policies governing the billing and payment of services provided by medical practitioners shall be published in a medical services provider manual ”

compensation of his services.<sup>2</sup> When the employer or insurance carrier accepts the physician's form, the employer or insurance carrier must authorize the physician's services and is required to compensate the physician in accordance with the Fee Schedule as mandated by the Act. A contract is created between the physician and employer or insurance carrier binding the employer or insurance carrier to compensate the physician for his services pursuant to the Fee Schedule for an efficient resolution of the claim. Although the physician forfeits his ability to establish and enforce his own fees for his services, he enjoys certain payment under a regulated payment policy enforced by the Commission.

When an employer or insurance carrier declines to authorize the physician's services, the employer or insurance carrier denies that the physician has performed any service compensable under the Act. No contract is created between the physician and employer or insurance carrier for certain payment under a regulated payment policy. To the extent the employer or insurance carrier desires to solicit the services of the physician, the physician has retained his ability to establish and enforce his own fees for his services. The physician's services are not admitted in a workers' compensation claim. Therefore, the Fee Schedule does not control compensation for those services. See S.C. Code Ann § 42-15-95(A) ("Fee Schedules established through the regulations of the Workers' Compensation Commission shall apply only to claims under Title 42."). If it is established later in a contested case by the Commission that a physician's services were in fact related to a workers' compensation claim, payment for those services under the Fee Schedule is then appropriate.

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<sup>2</sup> See 67 S C Reg Ann § 1302(B) (Medical practitioners submit claims for payment to the employer or insurance carrier on the Form 14A )

In this case Employer failed to authorize Appellant's services before Employer attempted to bind Appellant to the Fee Schedule for compensation of his deposition. Appellant did not complete a Form 14A for payment to Employer. Although Appellant did complete and return a Form 14B to Employer, Employer refused to authorize Appellant's services. Appellant cannot be forced into the jurisdiction of the Act by virtue of the fact that a patient he treated filed a workers' compensation claim. Likewise, Employer cannot unilaterally decide that some of Appellant's services are subject to the Fee Schedule and that other services such as Appellant's actual medical treatment is not. The Act requires that a physician's services be authorized before the physician can receive compensation in accordance with the Fee Schedule. The Commission erred as a matter of law when it affirmed Commissioner Roche's order directing Appellant to give his deposition pursuant to fixed fees in the Fee Schedule because Employer refused to authorize Appellant's services.

**A. APPELLANT'S COMPLETION OF A FORM 14B DID NOT SUBJECT HIM TO THE JURISDICTION OF THE ACT.**

Appellant's completion of a Form 14B did not subject him to the jurisdiction of the Act because Employer refused to authorize Appellant's services after the Form 14B was returned to Employer. Appellant therefore had no reasonable expectation that future services would be controlled by the Act's Fee Schedule. Under the Act, a physician's signature on a Form 14B mandates that the undersigned physician has been authorized by the employer/carrier to treat the claimant for his or her injury by accident pursuant to §§42-15-60, 42-1-172 or 42-11-10.

S.C Code Ann § 42-15-60(A) requires in pertinent part that

“The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be

required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty ”

S.C. Code Ann. § 42-1-172(C) states.

“As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician ”

S.C. Code Ann § 42-11-10 holds:

“As used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.”

Read together, the statutes show that a physician must be authorized by an employer or insurance carrier to provide medical treatment or an expert opinion in treating the claimant before a physician is bound to the Act through a Form 14B.

After Appellant’s completion of a Form 14B on May 9, 2013, Employer made no attempt to authorize Appellant’s treatment and evaluation of Claimant. Employer’s failure to authorize Appellant’s treatment as mandated on the Form 14B voided any attempt by Appellant to be bound to the Fee Schedule for compensation of his services. No contract between Employer and Appellant existed by which Appellant was required to submit reports required by the Commission in connection with a workers’ compensation case. See S.C. Code Ann § 42-15-90, *supra*; 67 S.C. Code Reg § 1301(A).<sup>3</sup> No attempt was made by Employer to compensate Appellant for the medical services Appellant rendered to

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<sup>3</sup> A medical practitioner or treatment facility shall furnish upon request all medical information relevant to the employee’s complaint of injury to the claimant, the employer, the employer’s representative, or the Commission. Payment for services rendered may be withheld from any medical practitioner or treatment facility who fails to comply with a request for this information. 67 S.C. Code Reg § 1301(A)

Claimant in 2012 Employer refused to authorize Appellant's treatment of Claimant despite Appellant's completion of the Form 14B. By declining to authorize Appellant's services after Appellant completed the Form 14B, Employer elected not to bind Appellant to the jurisdiction of the Act for future services including Appellant's deposition

**B. APPELLANT'S PROPOSED PROCEDURE TO REMIT PAYMENT FOR HIS DEPOSITION PURSUANT TO THE FEE SCHEDULE ONCE A COMPENSABLE CLAIM IS RECOGNIZED IS PROPER.**

Absent authorization from an employer for a physician's services under the Act, a physician has the right to consider and enforce his own fees for his services until it is determined that his services were related to treatment in a compensable claim under the Act. The Provider Manual affords compensation of a physician's deposition by individual consideration (IC) outside of the fixed fees in the Fee Schedule that establish \$400.00 for the first hour of testimony (CPT Code No. 99072) and \$100.00 for each additional fifteen minutes thereafter (CPT Code No. 99073). CPT Code No. 99074 was adapted for Commission use and compensates testimony by deposition of medical providers under individual consideration. To determine payment by individual consideration, the Provider Manual states.

“The payer will pay IC services based upon a review of the submitted documentation, the recommendation of the payer's medical consultant and/or the payer's review of prevailing charges for similar services.”

Physician's Independent Medical Evaluations (“IME”) in workers' compensation cases are also compensated by individual consideration instead of by a fixed fee. Because the Commission recognized that the physician retains the ability to establish his own fee for his services when the physician's services have not been authorized or admitted by an employer or insurance carrier under the Act, the Commission declined to bind the physician to the Fee Schedule for an independent evaluation.

Similarly, Appellant's services are much like an independent evaluation in this workers' compensation case, where, as here, Employer refused to authorize those services. In the event it is determined in a contested case that the injury for which a treating physician's services were rendered is related to a claim compensable under the Act then the fixed fees in the Fee Schedule must govern the physician's services. The physician should remit the difference between the fee paid under individual consideration and the fixed fees outlined in the Fee Schedule for a particular service, including a deposition. This is the procedure Appellant proposed to establish with Employer in anticipation of Appellant's deposition. Employer refused to consent.

Employer maintains that its failure to provide payment for Appellant's deposition pursuant to the fixed fees in the Fee Schedule would constitute a misdemeanor subject to imprisonment under S.C. Code Ann. § 42-15-90(B)(2). This contention overlooks the fact that compensation for Appellant's deposition in accordance with Appellant's own reasonable fee is provided for under the Act pursuant to the Provider Manual and Fee Schedule. Appellant's proposed remittance procedure is the proper method for compensating a physician for his services when a physician's services are not authorized by an employer or insurance carrier and the injury treated by the physician has not been deemed compensable under the Act. Employer's fear of imprisonment is misguided.

**II. APPELLANT IS ENTITLED TO A REASONABLE FEE FOR HIS DEPOSITION BECAUSE HE IS BEING COMPELLED TO TESTIFY ON MATTERS THAT REQUIRE EXPERT KNOWLEDGE AND PROFESSIONAL MEDICAL SKILL.**

Appellant is entitled to establish and enforce a reasonable fee for his deposition under Rule 26, SCRCF until his services have been authorized by Employer or the injury for which he treated Claimant is deemed compensable under the Act. Depositions of

witnesses in workers' compensation cases are governed in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas. S.C. Code Ann. § 42-3-160

Further, under the Administrative Procedures Act, parties may take the depositions of witnesses in contested cases but such depositions "shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas." S.C. Code Ann. § 1-23-320. Hence, the South Carolina Rules of Civil Procedure apply to Appellant's deposition in this case. Rule 26(b)(4)(C), SCRCF states in pertinent part:

Upon the request of the party seeking discovery, unless the court determines otherwise for good cause shown, or the parties agree otherwise, a party retaining an expert who is subject to deposition shall produce such expert in this state for the purpose of taking his deposition, and the party seeking discovery shall pay the expert a reasonable fee for time and expenses spent in travel and in responding to discovery. . .

Employer is seeking Appellant's deposition for the purpose of examining him with regard to Claimant's injury and the cause of those injuries. Appellant's understanding of Claimant's injury undoubtedly requires specialized knowledge and professional medical skill that would constitute medical evidence in this workers' compensation case. The Act acknowledges such testimony can only be given by experts. See S.C. Code Ann. § 42-1-172(C) ("As used in this section, medical evidence means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.") (see also S.C. Code Ann. § 42-11-10, *supra* )

Other jurisdictions have addressed the issue of whether a treating physician is entitled to a reasonable fee or a statutory fee for his testimony as a medical expert. In

Haslett v. Texas Industries, Inc., 1999 WL 354227 (N.D. Tex. 1999), the court found that it was customary in the district to compensate physicians at a reasonable rate for giving a deposition. The court stated “physicians provide invaluable services to the public and should be remunerated for their time when they cannot deliver medical care. They often have substantial overhead costs that they incur whether they are treating a patient or testifying about one. Litigators and their clients typically . . . respect the need to compensate physician-witnesses to the extent necessary to cover their overhead costs and to pay them a fee commensurate with their professional standing and special expertise.”

In Harvey v. Schultz, 2000 WL 33170885 (D. Kan. 2000), the court adopted a similar view and found that “treating physicians should ordinarily be allowed a reasonable fee beyond the \$40 statutory limit.” Moreover, the court found that it was “customary in this district and in Kansas state courts for parties to compensate physicians at a reasonable rate for deposition testimony in cases where they are not parties.” Thus, the court ordered counsel for both parties to confer and negotiate reasonable fees for the physicians.

In Coleman v. Dydula, 190 F.R.D. 320 (W.D. N.Y. 1999), the defendants sought a court order to compel the plaintiffs’ treating physicians to testify at the statutory rate. Recognizing the “virtual split of authority on the issue,” the district court deemed it appropriate under the circumstances to direct the payment of a “reasonable fee” to the physicians. Specifically, the court emphasized that the plaintiffs had disclosed the physicians, not as mere fact witnesses, but as trial witnesses expected to offer opinion testimony within the scope of FRCP 26(a)(2)(A) and FRE 702. Furthermore, the court supported its decision with the policy assertion in Haslett that treating physicians should be paid a fee “commensurate with their professional standing and special expertise.”

Similarly, Appellant is entitled to the reasonable fee established in his standard deposition invoice for giving expert opinion testimony about Claimant's injuries in this workers' compensation case. There is no question his testimony constitutes expert medical evidence to a reasonable degree of medical certainty as it is defined in S C. Code Ann. § 42-1-172(C) To the extent Employer contends Appellant was not retained and therefore cannot accept a reasonable fee for his services under the South Carolina Rules of Civil Procedure, Appellant was solicited by both parties for his medical opinion and compensated by Employer for his expert knowledge of Claimant's injuries Appellant is not merely an actor or viewer with respect to the occurrences that are the subject of the claim Rather, he was an active participant in the evaluation and treatment of Claimant who at all times was applying his specialized knowledge and skill in the medical profession. Employer's comparison to the facts here with that of a plumber who repairs a faulty leak defy logic and fail to accurately portray the significance of Appellant's treatment of the Claimant. The contention that Appellant is only entitled to a \$25.00 witness fee likewise offends a common sense application of the facts here and belies the significance that the Act itself places on physician's fees See S.C. Code Ann. 42-15-90, *supra*

The fee contained in Appellant's deposition invoice is standard among members similarly situated in his profession and area of practice It is reasonable in light of the value of his profession within the community. The fee is also equivalent to the value Appellant's office charges for his services in its business operations. The Act's deference to the provisions, conditions, and restrictions for the taking of a deposition in a civil action and the Provider Manual's provision for a medical provider's deposition by individual consideration plainly dictate that Appellant is permitted to establish and enforce his own reasonable fee as an expert in this workers' compensation case.

## CONCLUSION

Based on the foregoing, this Court should find that the Commission committed an error of law in affirming Commissioner Roche's Decision and Order that Appellant is bound to a fixed fee in the Fee Schedule for his deposition in this workers' compensation case. Employer refused to authorize Appellant's services pursuant to the Act and its' Fee Schedule. Therefore, Appellant is entitled to the reasonable fee set forth in his invoice for his deposition under the South Carolina Rules of Civil Procedure. This Court should adopt Appellant's remittance procedure for the compensation of physician's depositions when the employer or insurance carrier has not authorized a physician's services. Accordingly, Appellant respectfully requests that the Court reverse the Decision and Order of the Honorable South Carolina Workers' Compensation Commission.



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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Honorable Melody L. James, Commissioner  
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Rakesh Chokshi, M.D. . . . . Appellant.

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**PROOF OF SERVICE**

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The undersigned hereby certifies that on December 11, 2014 he served one copy of the Initial Brief of Appellant, Appellant's Designation of Matters to be Included in the Record on Appeal and Appellant's Certificate of the Designation of the Record on Appeal by placing same in an envelope with proper first class postage affixed thereto, and addressed as follows to their attorneys of record

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December 11, 2014

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December 11, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re *Chapman v Georgia-Pacific, Self-Insured Employer*  
Appellate No.: 2014-002069  
WCC File No.. 1209379  
Our File No D2391.01

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**SC Court of Appeals**

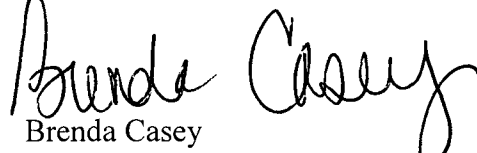
Dear Ms. Kitchings:

Enclosed, please find the original and one (1) copy of the Appellant's Proof of Service, Designation of Record on Appeal, Certification of Designation of Record on Appeal and Initial Brief regarding the above-referenced matter Please file the documents and return the clocked copy within the self-addressed stamped envelope

Please do not hesitate to contact me with any questions, concerns, or should you need anything else at this time Please note that all counsel of record has been copied on this correspondence.

With kind regards,

Sincerely,



Brenda Casey  
Paralegal to Carl E Pierce, II and  
Benjamin C. Smoot, II

/bdc

cc. E. Temple Hood, Esquire (*with enclosures*)  
Grady L Beard, Esquire (*with enclosures*)



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**SC Court of Appeals**

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TO The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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