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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner  
Gene McCaskill, Commissioner  
Andrea C. Roche, Commissioner

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Appellate Case No. 2015-000493

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Thomas Chad Hilton, Claimant.....Petitioner,

v.

Flakeboard America Limited, Employer, and  
Liberty Mutual Insurance Company, Carrier, Defendants.....Respondents.

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RESPONDENTS' AMENDED RETURN TO  
PETITION FOR WRIT OF CERTIORARI

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L. Brenn Watson, Esq.  
Ian C. Gohean, Esq.  
Willson Jones Carter & Baxley, P.A.  
872 S. Pleasantburg Drive  
Greenville, SC 29607  
(864) 527-3292

Attorneys for Respondents

Pursuant to Rules 240 and 242 of the South Carolina Appellate Court Rules, Respondents file their Return to Petition for Writ of Certiorari, and Respondents respectfully request the Supreme Court deny Petitioner's Petition based on the following grounds:

1. The Single Commissioner of the Workers' Compensation Commission issued a Decision and Order on June 4, 2013. (Appendix, pp. 1-47)
2. Respondents timely appealed the Order of the Single Commissioner to the Appellate Panel of the Workers' Compensation Commission, and oral arguments were heard before the Appellate Panel on October 14, 2013. (Appendix, pp. 48-160)
3. The Appellate Panel issued a Decision and Order on May 21, 2014, vacating the Order of the Single Commissioner and remanding the claim back to the Single Commissioner for further proceedings. (Appendix, pp. 137-160)
4. On June 20, 2014, Petitioner filed a Notice of Appeal with the South Carolina Court of Appeals, appealing the May 21, 2014, Decision and Order of the Appellate Panel of the Workers' Compensation Commission. (Appendix, pp. 161-174)
5. On June 20, 2014, simultaneous with Petitioner's filing of a Notice of Appeal with the Court of Appeals, Petitioner also filed a Petition for Writ of Certiorari with the South Carolina Supreme Court, requesting the Court review the May 21, 2014, Decision and Order of the Appellate Panel. (Supplemental Appendix, pp. 219-260)
6. On July 17, 2014, Respondents filed a Motion to Dismiss with the South Carolina Court of Appeals. (Appendix, pp. 175-184)

7. On July 25, 2014, the Supreme Court issued an Order, declining to entertain Petitioner's Petition for Writ of Certiorari. (Supplemental Appendix, p. 261)
8. On September 19, 2014, the Court of Appeals issued an Order, granting Respondents' Motion to Dismiss, and Petitioner's appeal was dismissed. (Appendix, p. 199)
9. On October 6, 2014, Petitioner filed a Petition for Rehearing with the Court of Appeals, and on February 6, 2016, the Court of Appeals issued an Order, denying the Petition for Rehearing. (Appendix, pp. 200-211)
10. On March 10, 2015, Petitioner filed a Petition for Writ of Certiorari with the Supreme Court, again requesting the Court review the May 21, 2014, Decision and Order of the Appellate Panel. (Petition for Writ of Certiorari, filed March 10, 2015)
11. Pursuant to the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A); S.C. Code Ann. § 1-23-390; *Bone v. U.S. Food Service*, 744 S.E.2d 552, 404 S.C. 67 (S.C. 2013); and *In re Breast Implant Product Liability Litigation*, 331 S.C. 540, 503 S.E.2d 445 (1998), Respondents respectfully request an Order denying the Petition because it is interlocutory.
12. In the alternative, Respondents maintain that the Appellate Panel committed no error, and Respondents respectfully request an Order denying the Petition.

For the foregoing reasons, Respondents respectfully request the Supreme Court deny Petitioner's Petition for Writ of Certiorari, with prejudice.

*Signature page follows*

Respectfully submitted,

**WILLSON JONES CARTER & BAXLEY, P.A.**

A handwritten signature in black ink, appearing to read "Ian C. Gohean". The signature is written in a cursive style with a horizontal line underneath it.

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Ian C. Gohean, Esquire  
872 S. Pleasantburg Drive  
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Attorneys for Defendants

Date: May 7, 2015

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AMENDED MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS'  
RETURN TO PETITION FOR WRIT OF CERTIORARI

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Attorneys for Respondents

## STATEMENT OF THE CASE

Petitioner sustained an admitted injury by accident arising out of and in the course of his employment on August 17, 2011, when he was bitten by an insect on the left thigh/buttock. Respondents provided appropriate medical treatment, including a simple debridement procedure of the bite abscess, and on July 6, 2012, Respondents filed a Request for Hearing before the South Carolina Workers' Compensation Commission, arguing Petitioner had reached maximum medical improvement (MMI) and was entitled to no additional benefits. Respondents further argued that Petitioner's continued allegations of disability associated with the accident were fraudulent, that Petitioner was not credible, and that Petitioner had made material misrepresentations throughout the life of the claim.

On January 3, 2013, a hearing was held before Commissioner Avery B. Wilkerson (hereinafter, "the Single Commissioner"). The Single Commissioner issued a Decision and Order on June 4, 2013, finding Petitioner had not reached MMI and was entitled to ongoing temporary disability benefits and medical treatment, and denying Respondents' assertion that Petitioner was not credible. Specifically, the Single Commissioner found that Petitioner's misrepresentations during the life of the claim were the result of a serious cognitive deficit stemming from a physical brain injury.

Respondents timely appealed the Single Commissioner's Order to the Appellate Panel of the Workers' Compensation Commission (hereinafter, "the Appellate Panel"). Respondents raised 106 grounds for appeal. These grounds focused on (1) Petitioner's credibility and alleged cognitive deficits, (2) whether Petitioner's alleged complaints are causally-related to the insect bite of August 17, 2011, and (3) whether Petitioner is

entitled to any additional benefits under the Workers' Compensation Act.

On May 21, 2014, the Appellate Panel issued a Decision and Order, vacating the Order of the Single Commissioner and remanding the claim back to the Single Commissioner for further proceedings. The Appellate Panel further ordered the Single Commissioner (1) to make a determination as to whether Petitioner is competent to testify, (2) to make a determination as to whether Petitioner requires a guardian *ad litem*, and (3) to refer Petitioner for an additional neurological evaluation prior to the claim being re-heard by the Single Commissioner.

Petitioner argues the Appellate Panel raised these "issues" on its own accord; *this is not the case*. In fact, these are not "issues" at all. The *issue* of whether Petitioner is deceitful and fraudulent, or whether his misrepresentations are the result of a serious cognitive deficit stemming from a physical brain injury (as he alleges), and the *issue* of whether Petitioner is entitled to additional benefits and/or medical treatment are the focus of the appeal. These *issues* were clearly preserved for review by the Appellate Panel. In vacating and remanding the claim and requesting specific determinations of the 3 items outlined above, the Appellate Panel was properly reacting to the *issues* before it on appeal, all of which were clearly preserved.

On June 20, 2014, Petitioner simultaneously filed a Petition for Writ of Certiorari in the South Carolina Supreme Court's original jurisdiction, and a Notice of Appeal with the South Carolina Court of Appeals, requesting that each Court review the May 21, 2014 Decision and Order of the Appellate Panel. On July 25, 2014, the Supreme Court issued an Order, declining to entertain Petitioner's Petition for Writ of Certiorari. On September 19, 2014, the Court of Appeals issued an Order, granting Respondents' Motion to

Dismiss Petitioner's appeal.

On October 6, 2014, Petitioner filed a Petition for Rehearing with the Court of Appeals, and on February 6, 2015, the Court of Appeals issued an Order, denying the Petition for Rehearing. On March 9, 2015, Petitioner filed a Petition for Writ of Certiorari with the Supreme Court, again requesting the Court review the May 21, 2014, Decision and Order of the Appellate Panel. For the reasons below, Respondents respectfully request an Order denying the Petition for Writ of Certiorari.

## ARGUMENTS

### **I. Petitioner will be provided an adequate remedy upon exhaustion of his administrative remedies, and immediate review by the Supreme Court is not warranted.**

Petitioner argues this claim falls within two exceptions to the general rule requiring exhaustion of administrative remedies prior to review in the Appellate Courts<sup>1</sup>: (1) where an administrative agency has acted outside of its authority, and (2) where a party demonstrates that pursuit of administrative remedies would be a vain or futile act. Neither of these exceptions are present in this case, and Petitioner's appeal is interlocutory.

#### **A. The Appellate Panel has not acted outside its authority.**

Petitioner asserts the following issues were improperly addressed by the Appellate Panel: (1) Petitioner's competency to testify, (2) Petitioner's need for a guardian *ad litem*, and (3) an order for Petitioner to undergo an additional neurological evaluation. Petitioner alleges these issues were not raised on appeal by Respondents.

In Respondents' Form 30, Request for Commission Review, Respondents listed 106 exceptions to the Single Commissioner's Order, including these four "General Exceptions":

1. In so far as the hearing commissioner's Findings of Fact, Conclusions of Law, and/or Order specifically state, or imply, that claimant has not reached maximum medical improvement related to the August 17, 2011 work accident, the same are not supported by the preponderance of the evidence and are errors of law.
2. In so far as the hearing commissioner's Findings of Fact, Conclusions of Law, and/or Order specifically state, or imply, that claimant is entitled to ongoing temporary disability related to the

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<sup>1</sup> The general rule requiring exhaustion of administrative remedies is discussed in great detail in Argument Sections II and III.

August 17, 2011 work accident, the same are not supported by the preponderance of the evidence and are errors of law.

3. In so far as the hearing commissioner's Findings of Fact, Conclusions of Law, and/or Order specifically state, or imply, that claimant is entitled to further medical treatment related to the August 17, 2011 work accident, the same are not supported by the preponderance of the evidence and are errors of law.
4. The hearing commissioner erred by not finding that the preponderance of the evidence establishes that the claimant completely lacks credibility and by not finding his claim for ongoing benefits is fraudulent. (Appendix, p. 50)

The Appellate Panel found that additional actions and information are required before a proper determination of the "issues" of the claim may be decided; the *issues* being: whether Petitioner has reached maximum medical improvement; whether Petitioner is entitled to additional temporary disability benefits; whether Petitioner is entitled to additional medical benefits; and most importantly, whether Petitioner lacks credibility and whether his claim is fraudulent. The Appellate Panel's determination that additional findings are necessary with regard to Petitioner's competency to testify, Petitioner's need for a guardian *ad litem*, and the need for additional neurological evidence, are not "issues" in and of themselves, but they directly relate to the issues raised by Respondents on appeal. The Appellate Panel was squarely within its authority to vacate and remand the claim and to order the three items noted above.

The heart of this claim centers on Petitioner's credibility and testimony. Respondents contend Petitioner's claim is wrought with fraudulent misrepresentations and deceit, and Petitioner's simple and minor abscess healed long ago, with no residual problems. The Single Commissioner found that Petitioner's inaccurate statements throughout the claim were the result of his "cognitive deficits produced by physical brain

damage confirmed by four duly qualified medical specialists.” Appendix, p. 44. Respondents appealed this determination in the Form 30, Request for Commission Review, specifically appealing the Single Commissioner’s failure to find that Petitioner lacks credibility and that the claim is fraudulent, and appealing the findings that Petitioner was entitled to ongoing and additional benefits and medical treatment.

Pursuant to the Workers’ Compensation Act, a guardian *ad litem* is required to represent a mentally incompetent claimant in a workers’ compensation claim (“When a ... mentally incompetent person is a party, a Guardian ad Litem *shall* represent the ... mentally incompetent.” Reg. 67-216(A), emphasis added). Furthermore, Regulation 67-216(E) indicates that, in cases where a mentally incompetent party is present, the “...Commission *shall not* hold a hearing for final determination of benefits until proof of appointment of a Guardian ad Litem is filed with the Commission.” Reg. 67-216(E), emphasis added. In the instant case, Petitioner has alleged that the numerous inconsistencies and misrepresentations throughout his workers’ compensation claim are the result of cognitive deficits related to a physical brain injury (i.e., competency), and the Appellate Panel, in direct relationship to the issues on appeal, determined that it was necessary to ensure that Petitioner is competent to testify and determine whether Petitioner requires a guardian *ad litem* before the claim can be properly adjudicated. This was certainly proper for the Commission to do, as it would be *improper* to adjudicate the claim without a guardian *ad litem* if one is necessary. Petitioner made his competency an issue in this claim, yet he now objects that his competency is an issue. Because competency is an issue, the Appellate Panel was legally bound to determine whether appointment of a guardian *ad litem* is required.

Furthermore, the *issue* of whether Petitioner is deceitful and fraudulent, or whether his misrepresentations were accidental and are the result of a serious cognitive deficit stemming from a physical brain injury, cannot be determined unless there is (1) a determination of whether Petitioner is competent to testify, (2) a determination of whether Petitioner requires a guardian *ad litem*, and (3) an additional neurological evaluation, which the Appellate Panel felt was necessary prior to an appropriate determination as to the *issue* of Petitioner's credibility.

Similarly, the *issues* of whether Petitioner is entitled to additional benefits and medical treatment cannot be decided without (1) a determination of whether Petitioner is competent to testify, (2) a determination of whether Petitioner requires a guardian *ad litem*, and (3) the results of an additional neurological evaluation, which the Appellate Panel felt was necessary prior to an appropriate determination as to the *issues* of Petitioner's need for additional benefits or treatment.

It is elementary that the Appellate Panel hears appeals from the Single Commissioner and may re-weigh the evidence and make its own findings and conclusions:

The Commission is the ultimate fact finder in Workers' Compensation cases and is not bound by the Single Commissioner's findings of fact. *Gadson v. Mikasa Corp.*, 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct.App.2006). Pursuant to S.C. Code Ann. § 42-17-50 (Supp.2007), the 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. *Lowe v. Am-Can Transp. Servs. Inc.*, 283 S.C. 534, 537, 324 S.E.2d 87, 89 (Ct.App.1984); see also *Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967) (holding although it is logical for the Commission to give weight to the Single Commissioner's opinion, the Commission may disagree with his findings based on the credibility of witnesses).

*Pack v. State Dept. of Transp.*, 673 S.E.2d 461, 381 S.C. 526 (S.C.App. 2009).

It is perhaps even more elementary that the Commission has authority to order a workers' compensation claimant to submit to medical examination:

After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the commission, shall submit himself to examination, at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer or the commission.

S.C. Code Ann. Section 42-15-80(A).

The Appellate Panel has not raised or addressed any additional or unpreserved issues; it has simply ordered additional actions so that the *appealed issues* may be appropriately addressed, and to ensure that Petitioner is competent to testify, as is required by the Workers' Compensation Act. The issues to be addressed at the hearing before the Single Commissioner were the issues of credibility, MMI, and Petitioner's entitlement to additional benefits under the Workers' Compensation Act. After the Single Commissioner's Order was issued, Respondents appealed the findings related to the issues of credibility, MMI, and Petitioner's entitlement to additional benefits under the Workers' Compensation Act; *all of the issues which were before the Single Commissioner*. The Appellate Panel was within the scope of its authority when it determined that these *issues* could not properly be decided (1) before a determination of whether Petitioner is competent to testify, (2) before a determination of whether Petitioner requires a guardian *ad litem*, and (3) without an additional neurological evaluation.

Petitioner also argues the Appellate Panel Order violates S.C. Code Ann. Sections 1-23-350 and 42-17-40, because the Order fails to make specific findings of fact and

conclusions of law. Section 1-23-350 requires findings of fact and conclusions of law be expressly stated when there is a “final decision” of an administrative agency. In this case, there is clearly no final decision or judgment being issued, as the Appellate Panel vacated and remanded the claim back to the Single Commissioner for further proceedings. Similarly, Section 42-17-40 indicates that the “award” shall include findings of fact and conclusions of law, and in this case, there is not an award being issued, as the claim is being remanded for further proceedings. Accordingly, the Appellate Panel acted within the scope of its authority in ordering a determination of whether Petitioner is competent to testify or requires a guardian *ad litem*, in ordering an additional neurological evaluation, and in vacating the Single Commissioner’s Order and remanding the claim back to the Single Commissioner.

**B. Petitioner has not demonstrated that his pursuit of further administrative remedies would be a vain or futile act.**

Petitioner next contends that further pursuit of administrative remedies would be futile, and he insists there is no “adequate remedy, short of immediate review by this Court.” Petition for Writ of Certiorari, p. 20. “Futility, however, must be demonstrated by a showing comparable to the administrative agency taking ‘a hard and fast position that makes an adverse ruling a certainty.’” *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006) (citing *Thetford Props. IV Ltd. P'ship v. U.S. Dep't of Hous. & Urban Dev.*, 907 F.2d 445, 450 (4th Cir.1990)). It is outlandish to allege that the eventual outcome of the proceedings at the workers’ compensation level are a certainty at this point in time. The Appellate Panel vacated the Order of the Single Commissioner and remanded the claim for further proceedings. *For all intents and purposes, Petitioner is currently in the same position he enjoyed prior to the initial hearing with*

*the Single Commissioner*, and his allegation that the remainder of the proceedings at the workers' compensation level will be futile is incomprehensible. How can Petitioner state that his remedies will be a vain or futile act when ***all of his administrative and legal remedies remain before him?***

Petitioner offers no true explanation for his assertion that further pursuit of administrative remedies would be futile, aside from the contention that "...delay will force his active and costly participation in senseless litigation of 'non-issues.'" Petition for Writ of Certiorari, p. 20. "A party is not excused from seeking administrative relief because he feels that he will encounter delay by the agency in acting on his requests." *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (S.C., 1989) (citing *Gates Mills Invest. Co. v. Village of Pepper Pike*, 59 Ohio App.2d 155, 392 N.E.2d 1316 (1978)). Furthermore, if there is a cost to the parties in this litigation process, it is to Respondents, who have been forced to continue weekly payments of Petitioner's workers' compensation benefits while he files one interlocutory appeal after another.

**II. Appeals from the South Carolina Workers' Compensation Commission are controlled by the Administrative Procedures Act, and a final judgment is required before a claim may be heard by the Appellate Courts.**

The Order of the Appellate Panel is not a final judgment subject to judicial review, and Petitioner's Petition should be denied. "The Administrative Procedures Act (APA) was enacted in 1977 and 'purports to provide uniform procedures before State Boards and Commissions for judicial review after the exhaustion of administrative remedies.'" *Bone v. U.S. Food Service*, 744 S.E.2d 552, 556, 404 S.C. 67, 73 (S.C. 2013) (citing *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981)). The APA establishes the standard for judicial review of decisions of the South Carolina Workers' Compensation Commission. *Bone*, 744 S.E.2d 556; *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 689 S.E.2d 615 (2010); *Lark*, 276 S.C. at 135, 276 S.E.2d at 306; *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 584 S.E.2d 390 (Ct.App.2003).

Under Section 1-23-380(A) of the APA, "[a] party *who has exhausted all administrative remedies* available within the agency and who is aggrieved by a *final decision* in a contested case is entitled to judicial review...." S.C. Code Ann. § 1-23-380(A) (Supp.2007) (emphasis added). Similarly, Section 1-23-390 of the APA, governing further appellate review, provides: "An aggrieved party may obtain a review of a *final judgment* of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases." S.C. Code Ann. § 1-23-390 (Supp.2012) (emphasis added).

In *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env't'l Control*, 387 S.C. 265, 692 S.E.2d 894, (2010), the Supreme Court of South Carolina reviewed an appeal from an Administrative Law Court and reasoned that appeals in administrative

agency matters are governed solely by the APA, not by the general appealability statute of Section 14-3-330(1), which permits review of “[a]ny intermediate judgment” involving the merits. *Charlotte-Mecklenburg*, 692 S.E.2d at 894. The *Charlotte-Mecklenburg* Court further indicated that concepts applicable in general appeals were not applicable under the APA, as specialized statutes prevail over more general statutes. *Id.* The Supreme Court reviewed this scenario in the workers’ compensation context in *Bone*, and after reviewing the reasoning in *Charlotte-Mecklenburg*, the Court stated: “We apply this reasoning in concluding that the meaning of a ‘final judgment’ as used in section 1-23-390 is not defined by using the exceptions that are present in the general appealability statute, whether or not the statute is specifically referenced.” *Bone*, 744 S.E.2d 557. Accordingly, the *Bone* decision mandates that a final judgment be issued in a workers’ compensation claim before the claim is appealable to a higher court.

The term “final judgment” was specifically interpreted by the Supreme Court of South Carolina in *Bone* with regard to workers’ compensation appeals:

This Court's jurisprudence is in accord with the definition of a final judgment found in Black's Law Dictionary. It defines a final judgment as “[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs ... and enforcement of the judgment.”

*Bone*, 744 S.E.2d 558 (citing *Black's Law Dictionary* 919 (9th ed.2009)). The *Bone* Court further specified: “The legislature, in using a well-known term of art such as ‘final judgment,’ meant exactly what ‘final judgment’ has always been understood to mean: something that finally disposes of the whole subject matter of the action or terminates the action, leaving nothing to be done but to execute the judgment...” *Bone*, 744 S.E.2d 561.

In deciding *Bone*, the Supreme Court made it abundantly clear that (1) the APA governs appeals from the South Carolina Workers' Compensation Commission, and (2) a decision of the Workers' Compensation Commission is not appealable until there has been a final judgment which disposes of the action entirely. In this case, there has been no such final judgment, and Petitioner has not exhausted his remedies at the Workers' Compensation Commission level so as to become entitled to judicial review.

**III. The May 21, 2014, Decision and Order of the Appellate Panel does not constitute a final judgment, and the Order is not immediately appealable.**

Petitioner sustained an admitted injury on August 17, 2011, when he was bitten by an insect on the left thigh/buttock and developed a small abscess. Respondents provided appropriate medical treatment, including a simple debridement procedure to excise the abscess. On July 6, 2012, Respondents filed a Request for Hearing before the South Carolina Workers' Compensation Commission, alleging Petitioner had reached MMI and was entitled to no additional benefits. Respondents further argued that Petitioner had made purposeful and material misrepresentations with regard to the workers' compensation claim. On January 3, 2013, a hearing was held before the Single Commissioner, who issued a Decision and Order on June 4, 2013, finding Petitioner had not reached MMI and was entitled to ongoing temporary disability benefits and medical treatment. The Single Commissioner found that Petitioner's misrepresentations throughout the claim were attributable to a level of cognitive dysfunction, which stemmed from a motor vehicle accident and brain injury years ago.

Respondents timely appealed the Order of the Single Commissioner to the Appellate Panel, and the Appellate Panel issued a Decision and Order on May 21, 2014, vacating the Order of the Single Commissioner and remanding the claim back to the Single Commissioner for determination of whether Petitioner is competent to testify, or whether Petitioner requires a guardian *ad litem*, pursuant to S.C. Code Ann. Section 42-15-55. The Appellate Panel further ordered Respondents to provide a neurological evaluation for Petitioner to further address the issues of the cause and extent of Petitioner's alleged conditions.

Petitioner has now requested review of the May 21, 2014, Decision and Order of the Appellate Panel, but it is plainly evident that the Appellate Panel's Order is not a final judgment, and it is not immediately appealable or reviewable. Not only do *some issues* remain undetermined by the Workers' Compensation Commission, but *every single issue* remains undetermined at this juncture, as the Single Commissioner's Order was vacated and the claim remanded for further proceedings. As there has been no final judgment, the claim is not immediately appealable or reviewable unless a final decision by the Workers' Compensation Commission would not provide an adequate remedy, which is not the case in this instance. S.C. Code Ann. § 1-23-380 (Supp.2007).

**CONCLUSION**

For the reasons set forth above, Respondents respectfully request an Order denying the Petition for Writ of Certiorari, with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Brenn Watson', is written over a horizontal line.

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May 7, 2015

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Thomas Chad Hilton, Claimant.....Petitioner,

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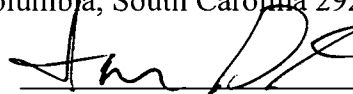
Flakeboard America Limited, Employer, and  
Liberty Mutual Insurance Company, Carrier, Defendants.....Respondents.

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PROOF OF SERVICE

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I certify that I have served the Amended Return to Petition for Writ of Certiorari, the accompanying Amended Memorandum in Support, and the Supplemental Appendix on Thomas Chad Hilton by depositing a copy in the United States Mail, postage prepaid, on May 7, 2015, addressed to his attorney of record, Andrew N. Safran, Esquire, Andrew N. Safran, LLC, Post Office Box 12089, Columbia, South Carolina 29211.



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May 7, 2015

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RECEIVED

MAY 12 2015

Re: Thomas Hilton vs. Flakeboard America Limited  
Appellate Case No. 2015-000493  
WCC File No.: 1111934 DOI: 8/17/2011  
Carrier: Liberty Mutual - Claim No.: WC555-A26831  
WJC&B File No.: 0010.03789

S.C. Supreme Court

Dear Mr. Shearouse:

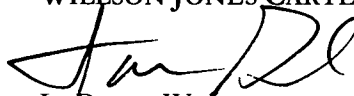
Respondents previously filed a Return to Petition for Writ of Certiorari in the above-captioned case, along with two Exhibits to the Return. Per the request of your office, we have now created a Supplemental Appendix, which encompasses the two documents previously submitted as Exhibits.

Enclosed for filing are an original and six copies of Respondents' Amended Return to Petitioner's Petition for Writ of Certiorari and accompanying Memorandum in Support in the above-referenced matter. Also enclosed are two copies of the Supplemental Appendix (one bound and one unbound), and a Proof of Service.

By copy of this letter, and as indicated by the Proof of Service, we now serve the above-referenced documents on Petitioner's Counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



L. Brenn Watson  
Ian C. Gohean

Enclosures

cc: Andrew N. Safran, Esquire  
South Carolina Workers' Compensation Judicial Department