

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-002626

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SC Court of Appeals

Builders Mutual Insurance Company,
for itself and its insured, Peachtree Electrical Services, Appellants,

v.

Bob Wire Electric, Inc. and South Carolina Home Builders
Association Self Insurance Fund Respondents.

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the circuit court erred in ruling the unappealed findings and conclusions set forth in the Appellate Panel's May 4, 2007 Decision and Order, over which the South Carolina Workers' Compensation Commission had exclusive original jurisdiction to decide, did not establish the law of the case?
- II. Whether the circuit court erred in ruling Appellants failed to plead *res judicata*?
- III. Whether the circuit court erred in denying Appellants' claim seeking a declaratory judgment ordering Respondents to reimburse Appellants where the unappealed findings and conclusions of the South Carolina Workers' Compensation Commission and the evidence presented during trial established that Respondents are responsible for Price's injuries sustained during his employment with Bob Wire Electric, Inc.
- IV. Whether the circuit court erred in denying Appellants' quantum meruit/unjust enrichment/restitution claim against Respondents where the unappealed findings and conclusions of the South Carolina Workers' Compensation Commission and the evidence presented during trial established that Appellants unwittingly conferred a non-gratuitous benefit upon Respondents, which Respondents realized; it would be inequitable for Respondents to retain the non-gratuitous benefit without paying its value; and the circuit court relied upon immaterial matters in reaching its determination?
- V. Whether the circuit court erred in denying Appellants' claim against Respondents for equitable indemnification where the unappealed findings and conclusions of the South Carolina Workers' Compensation Commission and the evidence presented during trial established that Respondents were at fault for failing to report Price's claim to the Workers' Compensation Commission and for failing to provide Price with workers' compensation benefits, thereby causing Appellants to unwittingly pay workers' compensation benefits to Price for an injury that Price sustained on-the-job while working for Respondent Bob Wire Electric, Inc.?
- VI. Whether the circuit court erred in denying Appellants' claim for attorney's fees and costs where Appellants prevailed in the workers' compensation proceeding as to all issues over which the South Carolina Workers' Compensation Commission had subject matter jurisdiction to decide and, but for the circuit court's numerous errors, Appellants would have been the prevailing parties in the proceeding before the circuit court as well?
- VII. Whether the circuit court erred in determining the equities did not favor Appellants when Appellants promptly and successfully joined Respondents in the workers' compensation proceedings, established Respondents were responsible for Price's injuries sustained while he was employed by Respondent Bob Wire Electric, Inc., and following the determinations by South Carolina's appellate courts, promptly brought the action in the circuit court seeking reimbursement of the amounts Appellants paid in connection

with Price's injuries sustained while employed by Respondent Bob Wire Electric, Inc.?

STATEMENT OF THE CASE

This case involves a dispute between two workers' compensation insurance carriers, Builders Mutual Insurance Company ("Builders Mutual") and South Carolina Home Builders Self Insurers Fund (the "Fund"). This dispute arose between Builders Mutual and the Fund after Builders Mutual unwittingly and erroneously paid workers' compensation benefits on behalf of its insured, Peachtree Electrical Services ("Peachtree"), to Christopher Price ("Price"), an employee who previously worked for and was injured while working for Peachtree, but who was injured a second time on November 3, 2003, while working for the Fund's insured, Bob Wire Electric, Inc. ("Bob Wire").

In 2002, Price worked for Peachtree. On December 9, 2002, Price suffered a back injury (the "First Accident") while working for Peachtree at a restaurant owned by Divine Dining Group, Inc. (Pls' Ex. 4, *Price v. Peachtree Elec. Servs. et al.*, Claim No. 0220142, Tr. of Hr'g held before Commissioner Huffstetler at pp. 7-8, June 5, 2006.) In connection with the First Accident, Builders Mutual, as Peachtree's workers' compensation insurance carrier, admitted liability for the First Accident and provided Price with workers' compensation and medical benefits, including spinal surgery performed by Dr. William L. Mills of Coastal Orthopedic Associates. (Pls' Ex. 4 at pp. 7-8.)

On August 8, 2003, Dr. Mills released Price to full-duty work at maximum medical improvement, with a ten percent impairment rating to the whole body and thirteen percent impairment to the spine. (Pls' Ex. 4 at pp. 8-9, 16.) Price did not return to work with Peachtree, and instead began working part-time for Bob Wire in October

2003. (Pls' Ex. 4 at pp. 9, 18.) On November 3, 2003, Price suffered another back injury (the "Second Accident") while working for Bob Wire. (Pls' Ex. 4 at pp. 9-12.) Price returned to Dr. Mills for treatment, complaining of worsening and continuing back pain, claiming it stemmed from the First Accident. (Pls' Ex. 4 at pp. 15, 19-20.) Bob Wire was aware of the Second Accident when it occurred, but did not report it to the South Carolina Workers' Compensation Commission. (Pls' Ex. 4 at pp. 12-13, 14-15, Pls' Ex. 7 at p. 13.) Following the Second Accident, Price did not return to work for Bob Wire nor did he file a claim for workers' compensation benefits against Bob Wire. (Pls' Ex. 4 at p. 13; Pls' Ex 2, *Price v. Divine Fish House, Inc., d/b/a Divine Fish House & Wahoo's Raw Bar & Grill*, C/A No. 04-CP-22-387, Depo. Tr. of C. Price at p. 12, Feb. 1, 2005 (condensed transcript).)

Not knowing that Price's November 2003 injury was actually the result of a second injury by accident suffered during Price's employment with Bob Wire, Builders Mutual, on behalf of Peachtree, resumed providing Price with benefits, paying him temporary total benefits and providing medical treatment, which included an additional spinal surgery. (Pls' Ex. 4 at p. 14, 16.)

In December 2003, Price's deposition was taken in connection his workers' compensation claim against Peachtree. During Price's deposition, he testified that he injured himself while performing electrical work for Peachtree at a restaurant. (Pls' Ex. 1, *Price v. Peachtree Elec. Servs*, Claim No. 0220142, C. Price Depo. Tr. at pp. 8-9, Dec. 18, 2003.) According to Price, after he was released to return to full-duty work, he did not return to work for Peachtree, and instead began working on his own "doing side work." (Pls' Ex. 1 at pp. 12-13.) He testified that in October 2003, he began working

part-time for Bob Wire. (Pls' Ex. 1 at pp. 13-14.) Price explained that from the time he returned to full-duty work, his back had gradually started hurting more, so he returned to Dr. Mills to receive treatment for his back pain. (Pls' Ex. 1 at pp. 14-15.) He further explained that he first sought treatment from Dr. Mills on October 15, 2003, after returning to full-duty work. (Pls' Ex. 1 at p. 15.) Additionally, Price testified that he had scheduled another appointment with Dr. Mills for November 13, 2003, and that on November 20, 2003, Dr. Mills had taken him out of work. (Pls' Ex. 1 at 15.) Although Price's deposition testimony indicated he had begun working for Bob Wire, nothing in Price's deposition testimony alluded to or gave reason to suspect Price had suffered a second injury by accident while working for Bob Wire. (Pls' Ex. 4 at p. 23-24.)

In the meantime, Price filed a negligence claim against Divine Dining for his injuries arising out of the First Accident in May 2004. On February 1, 2005, Price's deposition was taken in the negligence action, and no representative from Builders Mutual or Peachtree was present for Price's February 2005 deposition. (Pls' Ex 2, *Price v. Divine Fish House, Inc., d/b/a Divine Fish House & Wahoo's Raw Bar & Grill, C/A* No. 04-CP-22-387, Depo. Tr. of C. Price, Feb. 1, 2005 (condensed transcript).) During this deposition, Price asserted that he was re-injured in November 2003, while he was running electrical wires on a Bob Wire jobsite. (Pls' Ex. 2 at pp. 9-12.) His testimony described in detail the November 2003 incident while working for Bob Wire. (*Id.*) Shortly after Price's February 2005 deposition, counsel for Builders Mutual and Peachtree received a copy of Price's deposition transcript.

In April 2005, soon after Builders Mutual and Peachtree received a copy of Price's February 2005 deposition transcript, Builders Mutual and Peachtree added Bob

Wire as a party to the workers' compensation action. (Pls' Ex. 3, Transmittal Order, Claim No. 0220142, signed by Commissioner Susan S. Barden, June 21, 2005.) Builders Mutual and Peachtree also filed an application with the Workers' Compensation Commission to stop payment of compensation to Price. (Pls' Ex. 4 at p. 3.)

At a hearing on Builders Mutual and Peachtree's application to stop payments, held before Commissioner Huffstetler on June 5, 2006, Builders Mutual and Peachtree sought leave to stop Price's workers' compensation benefits, they sought a credit for any temporary compensation they paid Price after his August 8, 2003 maximum medical improvement date, and they sought a determination of whether Bob Wire and the Fund had any liability under the Workers' Compensation Act. (Pls' Ex. 4 at p. 3-4; Pls' Ex. 5, Decision and Order of Commissioner Huffstetler at p. 1, dated July 5, 2006.) During the June 5, 2006 hearing, Price maintained that his continuing back issues were related to the First Accident, and not to the Second Accident. (Pls' Ex. 5 at 7-9; Pls' Ex. 4 at Transcript pp. 19-20.) Following the hearing, Commissioner Huffstetler found that Price did not suffer a second injury by accident arising out of his employment with Bob Wire. (Pls' Ex. 5 at 12.)

Builders Mutual and Peachtree appealed Commissioner Huffstetler's Decision and Order to the Workers' Compensation Commission, and on May 4, 2007, the Commission affirmed, as modified Commissioner Huffstetler's Decision and Order. (Pls' Ex. 7, Appellate Panel Order, dated May 4, 2007.) The Appellate Panel found that Price had suffered a new accident and injury while working for Bob Wire on November 3, 2003, and that such injury was an aggravation of Price's pre-existing back condition. (Pls' Ex. 7 at p. 16.) Further, the Appellate Panel found that Price gave Bob Wire notice

of the new accident and injury by immediately telling his on-the-job supervisor, and the Appellate Panel found the claim against Bob Wire was not barred by the statute of limitations because Builders Mutual and Peachtree timely added Bob Wire as a party, and that there was no requirement that the employee must be the party to file a claim with the Commission. (Pls' Ex. 7 at pp. 14, 16.) The Appellate Panel remanded the matter to the Commissioner to determine Price's average weekly wage and benefits, and for an apportionment of benefits paid or to be paid in accordance with the Appellate Panel's findings. (Pls' Ex. 7 at p. 16.)

Bob Wire appealed the Appellate Panel's findings to the circuit court. (Pls' Ex. 8, Circuit Court Order, Claim No. 02200142, C/A No. 2007-CP-22-00885, filed Jan. 7, 2008.) On January 7, 2008, the Honorable Steven H. John dismissed Bob Wire's appeal as untimely, pursuant to section 42-17-60 of the South Carolina Code. (Pls' Ex. 8.)

When the matter returned to the Workers' Compensation Commission to determine the issues on remand from the Appellate Panel's May 4, 2007 Order, Commissioner Funderburk ordered Claim Number 0220142 bifurcated and a separate claim number was created, Claim Number 0327174. (Pls' Ex. 9, Decision and Order of Commissioner Funderburk, Claim No. 0220142 at pp. 3-4, dated June 12, 2008.) The matters in each claim were to be addressed in separate hearings. (Pls' Ex. 9 at 3.) The issues concerning the apportionment of benefits remained in Claim No. 0220142, and the remaining issues were assigned to Claim No. 0327174—the new matter involved Bob Wire's responsibility to pay workers' compensation benefits to Price in connection with the Second Accident. (Pls' Ex. 9 at pp. 4, 8.)

Following a hearing held on April 23, 2008, to determine the issues on remand from the Appellate Panel's May 4, 2007 order, Commissioner Funderburk found that Peachtree was entitled to be reimbursed by Bob Wire for medical benefits and temporary total disability benefits it paid that were causally related to the Second Accident. (Pls' Ex. 9 at p. 8.) Bob Wire appealed Commissioner Funderburk's Order, and the Appellate Panel affirmed. (Pls' Ex. 10, Amended Appellate Panel Decision and Order, Claim No. 0220142, dated Jan. 6, 2009.) Bob Wire then appealed to the circuit court, and Judge Culbertson also affirmed. (Pls' Ex. No. 11, *Price v. Peachtree Elec. Servs. et. al.*, Claim No. 02200142, C/A Nos. 2009-CP-22-0087 and 2009-CP-22-0182, Circuit Court Order, filed Sept. 21, 2009.)

On appeal to the Court of Appeals, Bob Wire and the Fund raised various issues that centered solely on whether Builders Mutual and Peachtree were entitled to reimbursement. (Pls' Ex. 12, Final Brief of Appellants, dated Aug. 25, 2010.) Although Bob Wire's appellate brief mentioned the various orders issued by the Commission, the only orders that Bob Wire and the Fund sought review of were "the September 14, 2009 Order of the Honorable Benjamin H. Culbertson, which affirmed the January 6, 2009 'Amended' Decision and Order of the South Carolina Workers' Compensation Commission." (Pls' Ex. 12 at 1-2 (statement of the case).) Bob Wire's appellate brief did not seek review of the May 4, 2007 Order or take issue with the Appellate Panel's finding that Price suffered an additional injury by accident while working for Bob Wire. (Pls' Ex. 12.)

On December 21, 2011, the South Carolina Court of Appeals held the Workers' Compensation Commission lacked subject matter jurisdiction to address Peachtree's

common law, equitable claim for reimbursement against Bob Wire. (Pls' Ex. 13.) *Price v. Peachtree Elec. Servs., Inc.*, 396 S.C. 403, 410, 721 S.E.2d 461, 464 (Ct. App. 2011). As a preliminary matter, the Court of Appeals held that Bob Wire's failure to timely appeal the Appellate Panel's May 4, 2007 Order did not render the May 4, 2007 Order's findings regarding subject matter jurisdiction the law of the case. *Price*, (Pls' Ex. 13.) 396 S.C. at 408-09, 721 S.E.2d; at 463-64. The Court of Appeals reasoned that Bob Wire was not required to immediately appeal the May 4, 2007 Order pursuant to section 14-3-330 of the South Carolina Code in order to preserve the issue of subject matter jurisdiction for appeal. *Id.* at 408, 721 S.E.2d at 464. Accordingly, the Court of Appeals vacated the orders addressing Peachtree's equitable claim for reimbursement (i.e. Commissioner Funderburk's June 12, 2008 Decision and Order; the Appellate Panel's Jan. 6, 2009 Amended Decision and Order; and Judge Culbertson's September 21, 2009 Order).

Peachtree and Builders Mutual sought review of the Court of Appeals' decision. On September 11, 2013, the South Carolina Supreme Court affirmed the Court of Appeals' decision, as modified. (Pls' Ex. 14.) *Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 748 S.E.2d 229 (2013). The Supreme Court affirmed the Court of Appeals' decision with regard to subject matter jurisdiction. (Pls' Ex. 14.) *Id.* At 456, 748 S.E.2d at 229. However, the Supreme Court found the Court of Appeals' reliance on section 14-3-330 was in error, citing its recently issued opinion in *Bone v. U.S. Food Service*, 404 S.C. 67, 744 S.E.2d 552 (2013). (Pls' Ex. 14.) *Id.* at 457, 748 S.E.2d at 230. Nevertheless, the Supreme Court held the Court of Appeals properly found Bob Wire's failure to failure to timely appeal the Appellate Panel's May 4, 2007 Order was not the law of the case. (Pls' Ex. 14.) *Id.*

On March 18, 2014, Builders Mutual and Peachtree (collectively, "Appellants") filed a Complaint in the Richland County Court of Common Pleas raising claims against Bob Wire and the Fund (collectively, "Respondents") for declaratory judgment, quantum meruit/unjust enrichment/restitution, and equitable indemnity. (Complaint, filed March 18, 2014.) Appellants sought to recover \$112,798.42 in medical benefits they unwittingly paid to Price after and in connection with his Second Accident, \$47,023.88 in temporary total disability benefits unwittingly paid to Price after and in connection with the Second Accident, along with costs, reasonable attorney's fees, and pre-judgment interest. Respondents timely answered the Complaint. (Answer.)

On March 16, 2015, a bench trial was held before the Honorable L. Casey Manning. (Tr. of R., Mar. 16, 2015.) On September 11, 2016, the circuit court entered an order denying all of Appellants' claims, entering judgment in favor of Respondents. (Or., entered Sept. 11, 2015.) Appellants timely moved to alter or amend the circuit court's September 11, 2015 Order. (Mot. to Alter or Amend, entered Sept. 21, 2015.) On November 16, 2015, the circuit court entered an order denying Appellants' motion to alter or amend. (Or., entered Nov. 16, 2015.) Appellants received written notice of the circuit court's order denying their motion to alter or amend on November 30, 2015. This timely appeal followed.

STATEMENT OF FACTS

On March 18, 2014, following a long and somewhat complicated procedural history, as set forth above in the Statement of the Case, Appellants filed a Complaint against Respondents in the Richland County Court of Common Pleas. (Complaint.) Appellants' lawsuit sought to recover amounts unwittingly paid to Price in connection

with the Second Accident because the South Carolina Workers' Compensation Commission ("the Commission")—the entity exclusive original jurisdiction to make such a determination—properly determined that Price suffered a second injury by accident on November 3, 2003, while working for Bob Wire. (Complaint.) Appellants also sought to recover the costs and attorneys' fees incurred as a result of Respondents' refusal to accept responsibility for Price's Second Accident. (Complaint.) Accordingly, Appellants brought three claims against Respondents.

Appellants' first claim against Respondents sought a declaratory judgment ordering Respondents to reimburse Appellants for all amounts Appellants paid to Price in connection with the Second Accident, long with costs, attorneys' fees, and pre-judgment interest. (Complaint.) The basis for Appellants' declaratory judgment claim was that the Appellate Panel's May 4, 2007 Order determined that Respondents were properly responsible for Price's Second Accident, and because no timely appeal was taken from that order, Appellants were entitled to reimbursement from Respondents. (Complaint.) Appellants' second claim against Respondents was for quantum meruit/unjust enrichment/restitution based upon the benefits Respondents realized from Appellants paying benefits to Price in connection with the Second Accident. (Complaint.) Finally, Appellants' third claim against Respondents was for equitable indemnity. (Complaint.)

Respondents asserted various defenses in response to Appellants' claims, including a general denial, failure to state a claim, laches, unclean hands, res judicata, and waiver. (Answer; Order, Sep. 11, 2015.) Additionally, Respondents maintained that the Appellate Panel's May 4, 2007 Order, which held that Price had suffered a second injury

by accident while in the employ of Respondent Bob Wire had been vacated by the Appellant Courts and was of no effect. (Answer; Or., Sep. 11, 2015.)

On March 16, 2015, the Honorable L. Casey Manning presided over the bench trial in this matter. (Transcript, Mar. 16, 2015; Order, Sept. 11, 2015.) All exhibits offered by Appellants were admitted into evidence over the objections of Respondents.¹ (Transcript, Mar. 16, 2015; Order Sep. 11, 2015.) The bench trial began with Appellants providing the circuit court with an overview of the procedural history of the case, which according to the transcript, was also set forth in the parties' pre-trial briefs. (Tr. 4-12). Appellants argued that the effect of the Court of Appeals' and Supreme Court's opinions was to vacate all orders from the order issued by Commissioner Funderburk on June 12, 2008 forward, (which addressed Appellants' entitlement to reimbursement from Respondents), and that the appellate courts' opinions had no effect on the Appellate Panel's May 4, 2007 Order. (*Id.* 4-12, 19-20.) As a result of the determinations already made by the Commission, the only entity with jurisdiction to make such determinations, Appellants maintained that the circuit court's role in determining the amounts to be reimbursed by Respondents to Appellants was simple and could be accomplished in large part by reviewing the information set forth in the exhibits presented to the trial court. (*Id.*)

¹ The exhibits offered admitted evidence by Appellants and Respondents during the bench trial included: (1) Price's – Depo. Tr., Dec. 18, 2003; (2) Price's – deposition, Tr., Feb. 1, 2005 (condensed); (3) Transmittal Order, June 21, 2005; (4) Transcript of June 5, 2006 hearing; (5) Commissioner Huffstetler's Decision and Order, July 5, 2006; (6) Consent Order. Aug. 28, 2006; (7) Appellate Panel Order, May 4, 2007; (8) Judge John's January 7, 2007 Order; (9) Commissioner Funderburk's Decision and Order June 13, 2008; (10) Amended Appellate Panel Order, January 7, 2009; (11) Judge Culbertson's September 21, 2009 Order; (12) Bob Wire and the Fund's Final Brief to the S.C. Court of Appeals; (13) S.C. Court of Appeals Opinion 4923; (14) S.C. Supreme Court's Sep. 11, 2013 Opinion; (15) Appellants' attorney's fee affidavit; (16) Temporary Total Disability Pay history; (17) Medical Benefits Pay History; (18) Summary of Expenses.

In contrast, Respondents maintained that the May 4, 2007 Order was vacated by the appellate courts' opinions, and that Respondents' failure to appeal the May 4, 2007 did not result in the matters decided in that order being conclusively determined by the Commission. (Tr. 12-17.) Essentially, Respondents contended that the appellate courts' opinions resulted in every order preceding the appellate courts' opinions being "wipe[d]," notwithstanding the fact that the May 4, 2007 Order was not included in the orders that were the subject of Respondents' appeal to the Court of Appeals. (Tr. 14.) Although the Court of Appeals' opinion specifically noted that Appellants' claim was "a common law, equitable claim for reimbursement," (Opinion at 6), Respondents further argued that because Appellants could have potentially sought relief via other avenues, Appellants had unclean hands and were precluded from seeking relief before the circuit court. (Tr. 15-16.)

Appellants called Jennifer "Janie" Wilson as a witness during the bench trial. Ms. Wilson testified that she works as an adjuster for Builders Mutual, and had worked in that role since 2002; however, she explained that she had worked as an adjuster since 1979. (Tr. 26-28.)

Ms. Wilson testified that she worked on the Price claim. (Tr. 28, 37-38.) She stated that Price's claim file originated when he was first injured in December 2002, when he suffered a back injury that required surgery. (Tr. 28-29.) She explained that after Price received treatment, he was rated and released by the doctor, and after that, he went back to work for a different employer. (Tr. 29-30.) According to Wilson, Price's claim did not end after he was rated and released because Price went back to his treating doctor and sought additional treatment for his back-related issues.

Ms. Wilson testified that she handled Price's claim for additional treatment, and as part of that claim, she obtained medical records from the treating doctor for the continued medical treatment. (Tr. 29-30.) Ms. Wilson stated that based on the information she had regarding Price's claim for additional treatment, she had no reason to believe that Price had suffered a new accident or intervening event. (Tr. 30.) Accordingly, based on the information she had at the time, Builders Mutual started paying Price workers' compensation benefits in January 2004, and provided Price with medical benefits. (Tr. 30-31.) Wilson explained that Price's medical benefits included additional treatment for back-related issues, including surgery, which consisted of a spinal fusion surgery, physical therapy, and treatment, which was standard treatment for that type of an injury. (Tr. 31.) Wilson further explained that Builders Mutual provided Price with benefits until he was released again. (Tr. 31-32.)

According to Wilson, Builders Mutual provided Price with \$47,023.88 in weekly benefits from November 21, 2003 to July 6, 2006. (Tr. 31-32.) Wilson testified that Plaintiffs' Exhibit 16 was a list of the temporary total disability payments made to Price by Builders Mutual. (Tr. 32-34.) Exhibit 16 was admitted into evidence over Respondents' objection. (Pls' Ex. 16.) Wilson stated Exhibit 17 was an itemization of the medical benefits Builders Mutual paid following Price's Second Accident, noting certain of the benefits provided were actually payments for the First Accident. (Tr. 33-34.) Exhibit 17 was admitted into evidence over Respondents' objection. (Pls' Ex. 17.) Wilson further testified that Builders Mutual paid a total of \$112,774.93 in medical benefits for Price's Second Accident, with a total of \$159,813.30 in medical and disability payments paid in connection with Price's Second Accident. (Tr. 35-36.)

Wilson explained that the total amounts Builders Mutual paid excluded expenses incurred in connection with Price's First Accident. (Tr. 36.) Additionally, according to Wilson, Builders Mutual incurred \$103,130.75 in legal fees and \$7,931.61 in costs in connection with the lengthy dispute regarding Price's Second Accident.² (Tr. 37; Pls' Ex. 15; Pls' Ex. 18.)

On cross-examination, Wilson testified she handled Price's file from the very beginning. (Tr. 37-38.) She stated that Price returned to work following his First Accident, and after the Second Accident, he returned to his doctor. (Tr. 39.) According to Wilson, she started Price on a running award after his deposition was taken in connection with his claim pertaining to the First Accident in December 2003. (Tr. 39-40.) Due to the time between Price's December 2003 deposition and her testimony at trial, Wilson did not recall much concerning Price's deposition. (Tr. 40.) However, according to Wilson, had Price been truthful during his December 2003 deposition, Wilson's investigation of his claim could have yielded information regarding the Second Accident; however, Price did not indicate any intervening event in his deposition. (Tr. 42.)

Wilson testified she learned about Price's Second Accident on April 12, 2005, following the deposition Price gave in connection with the negligence lawsuit. (Tr. 43.) Wilson stated someone had called her and told her about the deposition. (Tr. 43.) Wilson explained that after learning about that deposition, Builders Mutual had Bob Wire and the Fund added as parties to the workers' compensation case, and because they were under a running award, they also filed a stop payment application. (Tr. 43-44.) According to Price, Builders Mutual continued to pay Price benefits until the Commission granted its

² Appellants' counsels' attorney's fee affidavit and Appellants' Summary of Expenses were admitted into evidence over Respondents' objection. (Pls' Ex. 15; Pls' Ex. 18.)

application to stop payments. (Tr. 44-45.) Price explained that Builders Mutual was not permitted to stop paying benefits until its application was granted, otherwise it would have stopped payments. (Tr. 44-45.) According to Price, Appellants did not seek a credit for the benefits paid regarding the Second Accident in their settlement with Price regarding the First Accident,³ and instead, Appellants had added Respondents into the workers' compensation case in an effort to get Respondents to take responsibility for the costs associated with Price's Second Accident.⁴ (Tr. 46.)

Regarding the amounts paid by Builders Mutual in connection with Price's Second Accident, Wilson testified she attributed all of the amounts paid following Price's Second Accident to Price's Second Accident. (Tr. 49-50.) She stated she did not question the doctor regarding which of Price's medical benefits were attributed to Price's first injury because it was not necessary. (Tr. 50.) Wilson explained that Price had already been rated and released on his First Accident and she had used the date of Price's Second Accident, which was after Price had reached maximum medical improvement, to separate the costs associated with the two accidents. (Tr. 49-50.)

Following Wilson's testimony, counsel for Appellants testified regarding his affidavit of attorney's fees and costs. (Tr. 53-55.)

On September 11, 2015, the circuit court issued its order denying all of Appellants' claims, based in large part on the circuit court's misinterpretation of the

³ Appellants and Price entered into a clincher settlement agreement as to the First Accident, which the Commission approved on August 25, 2006. (Pls' Ex. 6.)

⁴ The transcript of the June 5, 2006 hearing before Commissioner Huffstetler notes that Appellants were also seeking a credit for benefits paid after Price reached maximum medical improvement on August 8, 2003. (Pls' Ex. 4 at 4; Pls' Ex. 5 at 1, 5, 12.)

effect that the appellate court's opinions had on the Appellate Panel's May 4, 2007 Order. (Order, Sept. 11, 2015.)

STANDARD OF REVIEW

The interpretation of a judgment is a question of law for the court. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 498 (2014). Questions of law are reviewed de novo by an appellate court. *Id.* An appellate court engaging in de novo review owes no deference to the circuit court's decision. *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 293, 778 S.E.2d 106, 108 (2015).

“Quantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” *Boykin Contracting, Inc. v. Kirby*, 405 S.C. 631, 637, 748 S.E.2d 795, 797 (Ct. App. 2013) (quoting *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004)). “As such, an action based on a theory of quantum meruit sounds in equity.” *Id.* “South Carolina has long recognized the principle of equitable indemnification.” *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999).

“When reviewing an action in equity, an appellate court reviews the evidence to determine facts in accordance with its own view of the preponderance of the evidence.” *Boykin Contracting*, 405 S.C. at 637, 748 S.E.2d at 798. “In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence.” *Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008).

ARGUMENT

- I. The circuit court erred in denying Appellants' claim seeking a declaratory judgment ordering Respondents to reimburse Appellants when it determined that the Appellate Panel's unappealed May 4, 2007 Order did not conclusively establish that Price suffered an injury in November 2003 while employed with Bob Wire, for which Respondents are properly responsible.**

The circuit court erred in denying Appellants' claim seeking a declaratory judgment by misconstruing the effect that the Court of Appeal's and Supreme Court's opinions had on the Appellate Panel's May 4, 2007 Order. *See Doe*, 407 S.C. at 134, 754 S.E.2d at 498. The rulings in the appellate opinions concerning the law of the case only dealt with the issue of the Commission's subject matter jurisdiction to determine reimbursement. Moreover, Respondents' appeal to the Court of Appeals did not challenge the Appellate Panel's May 4, 2007 Order, thus the orders vacated by the Appellate Courts did not include the Appellate Panel's May 4, 2007 Order.

Although sometimes used interchangeably by courts and practitioners alike, "[t]he term *res judicata* encompasses two types of preclusion: claim preclusion and issue preclusion." *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 834 (1997). "Collateral estoppel or issue preclusion prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." *Shelton v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 251, 481 S.E.2d 706, 707 (1997). Related to these concepts is the law of the case doctrine, which applies to an ongoing case, rather than a subsequently filed one. "[A]n unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (citing *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160-61, 177 S.E.2d 544, 544 (1970)).

Respondents' appeal to the Court of Appeals did not challenge the Appellate Panel's May 4, 2007 Order. (Pls' Ex. 12). In fact, a plain reading of Respondents' brief to the Court of Appeals and the Court of Appeals' and Supreme Court's opinions shows that the Appellate Panel's May 4, 2007 Order was not the subject of Respondents' appeal.⁵ (Pls' Ex. 12 at 1-2; Pls' Ex. 13; Pls' Ex. 14.) *See Price v. Peachtree Elec. Servs., Inc.*, 369 S.C. 403, 721 S.E.2d 461 (Ct. App. 2011), *aff'd as modified*, 405 S.C. 455 (2013). Although Respondents' failure to timely appeal the May 4, 2007 Order's findings "regarding subject matter jurisdiction did not constitute the law of the case" as to those findings, Respondents' failure to appeal the Appellate Panel's Order, which contains findings over which the Commission had exclusive original jurisdiction to decide—e.g. that Price suffered a second accident and injury while working for Bob Wire—did. *Id.* Because Respondents did not challenge the May 4, 2007 Order in their appeal to the Court of Appeals, as a matter of law, those findings were the law of the case in the workers' compensation matter, the decisions of the Court of Appeals and the Supreme Court did not vacate or alter in any way the determinations in the Appellate Panel's May 4, 2007 Order.

Respondents did not appeal the determinations in the Appellate Panel's May 4, 2007 Order, which concern matters over which the Commission has exclusive original jurisdiction to decide, including:

1. Price suffered a new accident and injury while working for Bob Wire on November 3, 2003, which was an aggravation of his pre-existing back condition;

⁵ A review of Respondents' Notice of Appeal, served November 24, 2009, also shows Respondents did not challenge the Appellate Panel's May 4, 2007 Order. *See Price v. Peachtree Elec. Servs., Inc.*, Appellate Case No. 2009-146866, Notice of Appeal, served Nov. 24, 2009 (available in the South Carolina Court of Appeals' legacy records).

2. Price gave notice of the new accident and injury, which occurred while working for Bob Wire, by immediately telling his on-the-job supervisor, who in turn told Bob Wire's owner.
3. The statute of limitations was satisfied by Peachtree and Builders Mutual adding Bob Wire as a party as soon as Peachtree and Builders Mutual learned of the new accident and injury, and "Bob Wire was well aware of this subsequent accident and failed to report it to the Commission."
4. The Act does not contain a requirement that a claim be filed by an employee, and that Peachtree brought the claim as soon as it knew one existed, as an aggrieved party has an inherent right to do.

(Pls' Ex. 7.) As Respondents did not challenge these determinations in their appeals to the circuit court or the Court of Appeals in the workers' compensation matter, those determinations became the law of the case in that matter. *Atl. Coast Builders & Contractors, LLC*, 398 S.C. at 329, 730 S.E.2d at 285. Moreover, because the above-referenced determinations in the Appellate Panel's May 4, 2007 Order became final and were "actually and necessarily litigated and determined in" the workers' compensation proceeding, those determinations were conclusively established and could not be relitigated in this matter. *Shelton*, 325 S.C. at 251, 481 S.E.2d at 707.⁶

⁶ South Carolina's Workers' Compensation Act ("the Act") vests the South Carolina Workers' Compensation Commission ("the Commission") with exclusive original jurisdiction over work-related injuries sustained by an employee. *Sabb v. South Carolina State University*, 350 S.C. 416, 422-23, 567 S.E.2d 231, 234 (2002). Under the Act, only the Commission can determine whether an employee suffered an injury arising out of and in the course of employment, and only the Commission can determine which employer is responsible for an employee's injuries. See S.C. Code Ann. § 42-1-310 (presuming every employee and employer have accepted the provisions of the Act regarding compensation for personal injuries by accident arising out of and in the course of employment); S.C. Code Ann. § 42-3-180 ("All questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the commission, shall be determined by the commission, except as otherwise provided in this title.").

In this matter, Appellants brought claims against Respondents for declaratory judgment, quantum meruit/unjust enrichment/restitution, and equitable indemnification, all of which were premised upon the unappealed, conclusively established findings of the Appellate Panel's May 4, 2007 Order. (*See* Compl. ¶¶ 21, 37–39.) The facts as pled by Appellants in their Complaint aver that the Appellate Panel's May 4, 2007 Order established that Price had suffered an accident while working for Bob Wire for which Respondents were properly responsible; that the May 4, 2007 Order has not been vacated, altered or modified; and that that no appeal was taken from the May 4, 2007 Order. (*Id.*) Appellants pled sufficient facts to put Respondents on notice that Appellants were seeking their common law remedies in the Court of Common Pleas in by enforcing the unappealed, final determinations of the Appellate Panel against Respondents—determinations over which only the Commission has the authority to make. *See Crestwood*, 328 S.C. at 216, 493 S.E.2d at 834; *Shelton*, 325 S.C. at 251, 481 S.E.2d at 707.

Nevertheless, the circuit court denied Appellants' claim for a declaratory judgment, erroneously determining that Respondents' failure to appeal the findings in the May 4, 2007 Order did not conclusively establish that Price suffered an injury in November 2003 while employed with Respondent Bob Wire, for which Respondents are properly responsible. The circuit court's erroneous determination was based upon its misapprehension regarding the effect of the appellate court decisions regarding subject matter jurisdiction and its erroneous determination that Appellants failed to plead *res judicata*, when the facts as pled by Appellants put Respondents on notice that Appellants sought to enforce the determinations from the May 4, 2007 Order. These erroneous

determinations resulted in the circuit court denying Appellants' declaratory judgment claim, and it improperly clouded the circuit court's analysis of Appellants' remaining claims.

II. The circuit court erred in denying Appellants' quantum meruit/unjust enrichment/restitution claim against Respondents because the unappealed findings and conclusions of the South Carolina Workers' Compensation Commission and the evidence presented during trial established that Appellants unwittingly conferred a non-gratuitous benefit upon Respondents when Appellants paid benefits to Price in connection with the Second Accident, which Respondents realized; it would be inequitable for Respondents to retain the non-gratuitous benefit without paying its value; and the circuit court relied upon immaterial matters in reaching its determination.

The circuit court erred in denying Appellants' quantum meruit/unjust enrichment/restitution claim against Respondents. Specifically, the circuit court erroneously concluded that Appellants presented no evidence that it conferred a non-gratuitous benefit on the Fund, that Price was required to bring a claim against Respondents in order for Appellants to show that they conferred a benefit on Respondents, and that Appellants knew of Price's second accident as early December 18, 2003, when the evidence before the circuit court established no such knowledge.

To recover on a theory of restitution, the plaintiff must show the following elements of a quantum meruit claim: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *Boykin Contracting, Inc. v. Kirby*, 405 S.C. 631, 637, 748 S.E.2d 795, 798 (Ct. App. 2013) (citing *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 617-18, 703 S.E.2d 221, 225 (2010)); *JASDIP Properties SC, LLC v. Estate of Richardson*, 395 S.C. 633, 640, 720 S.E.2d 485, 489 (Ct. App. 2011). The terms "restitution" and

unjust enrichment” are modern designations for the older doctrine of quasi contracts, all of which permit recovery of the amount the defendant has benefitted at the expense of the plaintiff in order to preclude unjust enrichment. *See Costa & Sons Constr. Co. v. Long*, 306 S.C. 465, 468 & n.1, 412 S.E.2d 450, 452 & n.1 (Ct. App. 1991) (citing 66 Am. Jur. 2d *Restitution and Implied Contracts* §§ 7 and 21 (1973)); *Dema v. Tenet Physician Services-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). “Restitution is a remedy designed to prevent unjust enrichment.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003).

Here, the evidence presented to the circuit court established that Appellants conferred a non-gratuitous benefit upon Respondents when Appellants unwittingly paid workers’ compensation benefits to Price in connection with the Second Accident. Price never disclosed to Appellants the incident that occurred while he was working for Bob Wire and Respondents never reported the incident to the commission.

After Price was released on maximum medical improvement in August 2003, he began working for Bob Wire. (Appellate Panel May 4, 2007 Order at 10.) The Appellate Panel determined that on November 3, 2003, while working for Bob Wire, Price suffered a new accident and injury while working for Bob Wire. (Appellate Panel May 4, 2007 Order)

Price did not file a claim against Bob Wire, and instead pursued additional benefits against Appellants based on his First Accident. (Appellate Panel May 4, 2007 Order) Price believed that his back issues following reaching maximum medical improvement were not the result of a new injury, but rather the issues related to the First Accident. (Pls’ Ex. 2, Depo. Tr. 11–12, Feb. 1, 2005; Pls’ Ex. 4, Hrg. Tr. 19–21.) He

admitted he never told Appellants or his Doctor about the incident at Bob Wire, and he further admitted that during his deposition from December 18, 2003, he never said anything about the incident at Bob Wire. (Pls' Ex. 4, Hrg. Tr. 13-14, 20-21, 24). However, Price admitted that he testified about the incident at Bob Wire during his February 2005 deposition. (Pls' Ex. 4, Hrg. Tr. 24.) Moreover, according to Price, Appellants put Price back on temporary total disability payments and he received medical treatments, including a double fusion back surgery, following the Second Accident. (Pls' Ex. 4, Hrg. Tr. 13-14, 16.) Price further testified that Brad, his supervisor on the jobsite on the day of the incident at Bob Wire knew about his injury, and that they had all left the job site early that day because Price was unable to continue working due to the pain. (Pls' Ex. 4, Hrg. Tr. 14-15.) Despite Respondents' knowledge of Price's on-the-job accident when it occurred, Respondents failed to report the incident to the Commission. *See* S.C. Code Ann. Regs. 67-411.

Although the circuit court's order cites Price's December 18, 2003 deposition transcript as establishing Appellants knew of the Second Accident as early as December 18, 2003, a review of the transcript's contents provides no support for this conclusion. (Pls' Ex. 1.) Instead, all the December 18, 2003 transcript reveals is that Price went to work for Bob Wire in October 2003, and that before he went to work with Bob Wire, he was already experiencing pain. (Pls. Ex. 1, Depo Tr. at 15.) Nothing in Price's December 18, 2003 deposition transcript indicates anything that would have put Appellants on notice of Price's Second Accident. Although the circuit court also cited the argument of Respondents' attorney at the June 5, 2006 hearing before the Commissioner Huffstetler that Appellants were placed on notice by the deposition, the

Appellate Panel's May 4, 2007 Order determined that Appellants moved to add Respondents as parties to the workers' compensation proceeding "as soon as [Appellants] learned of the new accident and injury"—Respondents did not appeal that determination. (Appellate Panel's May 4, 2007 Order at 13)

Further, the circuit court misconstrues the Act, as it does not require an employee to file a claim. (Order at 6.) Section 42-15-40 of the South Carolina Code simply requires that a claim be filed with the Commission within two years after an accident. The only thing an injured employee must do under the Act, particularly in a situation like this, is give his employer notice of the accident, which the Appellate Panel determined occurred in Price's case. S.C. Code Ann. § 42-15-40; (Appellate Panel's May 4, 2007 Order.) Appellants discovered during the course of the workers' compensation proceedings that Price's injuries were actually the result of a Second Accident that occurred while Price was working for Bob Wire, and soon thereafter, Appellants brought Respondents into the workers' compensation case in an effort to ensure the party properly responsible for Price's Second Accident was held responsible for such. That Price did not make a claim against Respondents is of no moment.

Here, the record shows that Appellants resumed providing Price with workers' compensation benefits in connection with Price's First Accident because they did not know that Price had suffered the Second Accident while working for Bob Wire. Nothing in Price's medical records or his December 18, 2003 deposition gave Appellants any indication that Price had suffered the Second Accident, and Price admitted he never told Appellants or his Doctor about the incident at Bob Wire. Instead of reporting the incident to the Commission, as Respondents were required to do by law in circumstances such as

this, *see* S.C. Code Ann. Regs. 67-411, Respondents did nothing and reaped the benefit of Appellants providing benefits to Price for which they were properly responsible. It was not until Appellants reviewed the transcript from Price's February 1, 2005 deposition that they discovered the Second Accident (Trial Tr. at 38–39), and shortly thereafter, Appellants had Respondents added to the workers' compensation proceeding in order to obtain a determination that Respondents were properly responsible for Price's Second Accident—a determination Appellants successfully obtained. (Appellate Panel Order of May 4, 2007.)

The evidence presented to the circuit court shows that Appellants conferred a benefit upon Respondents because Appellants paid benefits to Price in connection with the Second Accident, which the Appellate Panel determined occurred during Price's employment with Bob Wire. Respondents realized that benefit when they failed to report Price's injury to the Commission, thereby allowing Appellants to assume responsibility for a claim for which Respondents were actually responsible. Further, it is unjust for Respondents to retain the benefit unwittingly conferred by Appellants under the circumstances of this case because Respondents concealed their knowledge of Price's Second Accident. *See Boykin* 405 S.C. at 637, 748 S.E.2d at 798. Accordingly, the circuit court erred in denying Appellants' claim against Respondents for quantum meruit/unjust enrichment/restitution, and this Court should reverse the circuit court's determination as to this claim.

III. The circuit court erred in denying Appellants' claim against Respondents for equitable indemnification because the unappealed findings and conclusions of the South Carolina Workers' Compensation Commission and the evidence presented during trial established that Respondents were at fault for failing to report Price's injury to the Workers' Compensation Commission and for failing to provide Price with workers' compensation benefits, thereby causing Appellants to unwittingly pay workers' compensation benefits to Price for an injury that Price sustained on-the-job while working for Respondent Bob Wire Electric, Inc.

This Court should reverse the circuit court's denial of Appellants' claim for equitable indemnification because the circuit court erroneously concluded that there was no issue of imputed fault to provide a basis for Respondents' liability. Moreover, this Court should reverse the circuit court's denial of this claim because the evidence before the circuit court established that Respondents' failure to report Price's injury to the Commission resulted in Appellants paying benefits that were properly attributable to the Second Accident and engaging in litigation as to Price's Second Accident, which made it necessary for Appellants to incur expenses to protect their interests.

Under the doctrine of equitable indemnity, "a right of indemnity exists whenever the relation between the parties is such that in law or equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." *Stuck v. Pioneer Logging Machinery, Inc.*, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983). Generally, an indemnity plaintiff may recover damages from a defendant "where the wrongful act of the defendant has involved the indemnity plaintiff in litigation with others or placed him in such relation with others as makes it necessary to incur expense to protect his interest." *Addy v. Bolton*, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971). When a sufficient relationship between them exists, the indemnity plaintiff must prove the elements of an equitable indemnification claim to

recover damages. *Inglese v. Beal*, 403 S.C. 290, 299, 742 S.E.2d 687, 692 (Ct. App. 2013).

A plaintiff may maintain an equitable indemnification action if he was required to pay damages because of liability imputed to him as the result of another's wrongful action. *Fowler v. Hunter*, 388 S.C. 355, 363, 697 S.E.2d 531, 535 (2010) (citing *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999)). "A plaintiff asserting an equitable indemnification cause of action may recover damages if he proves: (1) the indemnitor was liable for causing the plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it, which were eventually proven to be the fault of the indemnitor." *Id.*

First, the circuit court erroneously determined that there was no issue of imputed fault. (Order at 8.) Here, the evidence in the record shows that Respondents knew of the Second Accident and their responsibility to report the incident to the Commission, yet failed to do so. Respondents' failure to report the incident to the Commission and their failure to take responsibility for Price's Second Accident resulted in Appellants unwittingly paying benefits to Price that were properly attributed solely to Respondents. Due to Respondents' failures, fault on the part of Respondents and Respondents' liability to Price for his work-related injuries is established.

Moreover, the evidence in the record before the circuit court conclusively established Respondents were liable to Price for the Second Accident; Appellants successfully established before the Commission that they were not responsible for the Second Accident; and Appellants incurred substantial damages as a result of Price's

Second Accident that was ultimately proven to be the exclusive responsibility of Respondents. *Fowler*, 388 S.C. at 363, 697 S.E.2d 535. Those damages include, as set forth at trial, the benefits unwittingly paid to Price in connection with the Second Accident, along with the legal fees and costs that Appellants incurred in establishing that Respondents were responsible for Price's Second Accident and in establishing Respondents' financial responsibility for Price's Second Accident. *Id.*; *McCoy v. Greenwave Enters., Inc.*, 408 S.C. 355, 759 S.E.2d 136 (2014).

The circuit court's Order notes that most of Appellants' fees and costs were incurred before the Commission (Order at 9); however, naturally, the lion's share of the legal fees and costs that Appellants incurred in establishing Respondents' responsibility for Price's Second Accident were incurred before the Commission—the only entity that could make the determination that Price suffered a second injury by accident while working for Bob Wire. It is nonsensical to believe that those costs could have been incurred elsewhere, as the critical determinations could only have been made by the Commission.

Although the circuit court was correct to point out that Appellants did not prevail on the issue of subject matter jurisdiction (Order at 9-10), Appellants prevailed before the Commission in establishing Respondents' responsibility under the Act for Price's Second Accident, an issue over which the Commission had exclusive original jurisdiction to decide. Additionally, but for the circuit court's numerous errors, Appellants would have been the prevailing parties in the proceeding before the circuit court in vindicating their right to reimbursement and equitable indemnification. Accordingly, this Court should reverse the circuit court's determination as to Appellants' equitable indemnification and

as to Appellants' entitlement to recover damages, which pursuant to South Carolina law, include the legal fees and costs Appellants incurred in establishing that Respondents were responsible for Price's Second Accident and in establishing Respondents' financial responsibility for Price's Second Accident. *See McCoy* 408 S.C. 355, 759 S.E.2d 136.

IV. The circuit court erred in determining the equities did not favor Appellants when Appellants promptly and successfully joined Respondents in the workers' compensation proceedings, established Respondents were responsible for Price's injuries sustained while he was employed by Bob Wire and following the determinations by South Carolina's appellate courts, promptly brought the action in the circuit court seeking reimbursement of the amounts it paid in connection with Price's injuries sustained while employed by Bob Wire.

This Court should reverse the circuit court's determination that the equities in this matter did not favor Appellants. "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 116-17, 687 S.E.2d 29, 33 (2009) (quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006)). "Equity will not suffer a wrong without a remedy." *Lane v. New York Life Ins. Co.*, 147 S.C. 333, 369, 145 S.E. 196, 207 (1928)).

The circuit court's reasoning essentially consists of misguided Monday-morning-quarterbacking, when, in actuality, Respondents' actions resulted in Appellants suffering significant losses as a result of Price's Second Accident, for which Respondents are properly responsible. Appellants were successful in pursuing equitable indemnification before the Commission's single commissioner, the Appellate Panel, and the circuit court. Each of those determinations concluded that Appellants were entitled to be reimbursed by

Respondents for medical benefits paid and temporary total disability benefits paid in connection with Price's Second Accident because the Second Accident was properly Respondents' responsibility.

Moreover, because Appellants were successful in their attempt to obtain reimbursement before the Commission, it was unnecessary at the Commission level to continue to seek a credit, although Appellants had, in fact sought before the Commission. (Pls' Ex. 4 at 4; Pls' Ex. 5.) Ultimately appeals were taken to the Court of Appeal and the Supreme Court in which Appellants did not prevail on the issue of subject matter jurisdiction. Nevertheless the Court of Appeals' opinion noted that Appellants' claim against Respondents "presented . . . common law, equitable claim for reimbursement." Soon after the remittitur was issued, Appellants brought this action against Respondents in the circuit court. That Appellants could have pursued the relief they sought in the circuit court does not mean that Appellants did not vigorously pursue their claim before the Commission, and it certainly does not mean that disposition of this dispute was unreasonably delayed.

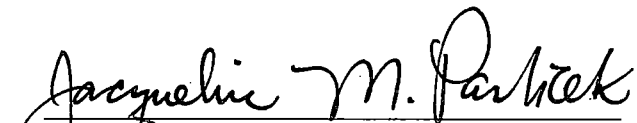
Moreover, Price's testimony at the bench trial was unnecessary, as all matters concerning his workers' compensation claims were necessarily determined by the Commission. Any testimony he could have offered would have been cumulative to the evidence already in the record before the circuit court. Transcripts from his depositions and testimony before the Commission were made a part of the record, and Respondents had every opportunity to examine him during the hearing before the Commission. It is unclear how the circuit court could have concluded the equities did not favor Appellants because of Price's absence from the bench trial.

Finally, because Price had already been released on maximum medical improvement before his Second Accident, it was unnecessary to have expert testimony to establish the medical expenses attributable to the Second Accident—all medical expenses and temporary total disability payments from the date of the Second Accident were properly attributable to the Second Accident and nothing in the record before the circuit court indicates any of those amounts should not have been paid.

CONCLUSION

For the foregoing reasons, this court should reverse the determinations of the circuit court as to all of the Appellants' claims.

Respectfully submitted,



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