

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Chair for the Commission

Appellate Case No. 2018-000532

Misty A. Morris,

Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank,
and Hartford Accident & Indemnity Co.,

Employer,
Carrier,

IN RE: Attorney's Fee Petition of
David Proffitt,

Appellant,

v.

South Carolina Workers' Compensation
Commission,

Respondent.

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SC Court of Appeals

**APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS
OR FOR SUBSTITUTION OF PARTIES**

Appellant David Proffitt submits his return to Respondent's Motion to Dismiss or For Substitution of Parties pursuant to Rule 240, SCACR.

Appellant asks that the Court deny the motion to dismiss and allow this appeal to proceed with the South Carolina Workers' Compensation Commission named as Respondent. In the alternative, Appellant has no objection to Claimant Misty A. Morris being substituted as Respondent if the Court concludes that is appropriate. Appellant agrees with Respondent that an

attorney guardian ad litem should be appointed to represent Claimant's interests if she is named as Respondent.

Appellant already has filed an initial brief, which sets forth the facts and issues of law in this appeal.

Respondent states "[s]ince this appeal involves findings by the Commission that Mr. Proffitt is not entitled to a portion of the contingency fees he requested be withheld from the injured workers' award in this matter, the adverse party is the Claimant, Misty Morris. There is no relief which can be awarded to Mr. Proffitt from the Commission. Should Mr. Proffitt prevail on the merits of his argument that he attempted to make to the Full Commission, the Commission would lose nothing." (Resp. Motion, p. 4.)

Respondent is incorrect with regard to the present appeal. This appeal does not in any way involve the merits of the single commissioner's decision to partially deny the award of attorney's fees. The present appeal involves only the Commission's decision to administratively dismiss the appeal without briefing, a hearing and a decision by the full commission.

Briefly, Appellant appealed the single commissioner's partial denial of an award for attorney's fees to the full commission. Appellant did so for two reasons. First, the usual, one-third fee was fully earned by Appellant in a hard-fought, difficult mold exposure case. Second, it is Appellant's belief that the Commission's position that an award of attorney's fees may not be paid from the portion of funds which are fully paid and disbursed to a claimant, but which are designated as future medical costs pursuant to a Utica-Mohawk provision in order to maximize the claimant's Social Security disability benefits, is wrong under the law and regularly creates an unnecessary and improper conflict of interest between attorneys and workers' compensation claimants. Appellant intends to challenge the Commission's position on this issue in the

appellate courts; however, the merits of the issue are not presently before the Court.

The propriety of the single commissioner's decision has not yet been reviewed by the full commission because Respondent administratively dismissed the appeal. Appellant argues in his initial brief that Respondent's denial of Appellant's motion to reinstate the appeal after it was administratively dismissed and failure to consider the appeal on the merits constitutes reversible error on several grounds. The decision was arbitrary, capricious and an abuse of discretion; it constitutes a violation of the constitutional and statutory right to due process; and it was made upon unlawful procedure and is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Appellant contends that he has shown good cause to reinstate the appeal after mistakenly calendaring the wrong due date for the brief to the full commission, there was no opposing party which could have been prejudiced by granting the motion, and Appellant was ready, willing and able to immediately submit his brief to Respondent 13 days after the original due date and 22 days before the scheduled hearing date.

As this case was postured before Respondent and as it is currently postured on appeal, Claimant is not an adverse party. Appellant submitted an affidavit to Respondent signed by Claimant in which she stated that she wished for the attorney's fee to be paid as requested by Appellant. (EXHIBIT A.) The employer and carrier were not involved in the attorney's fee matter, as their attorney so informed Respondent. (EXHIBIT B.) The issue of the attorney's fee was addressed solely by Appellant submitting a fee petition to a single commissioner, a hearing and a subsequent order denying the petition in part. No other persons or parties were involved.¹

¹ Appellant has received a letter dated June 14, 2018, from Claimant's mother, asking on Claimant's behalf that the funds held in trust until this matter is resolved be paid to Claimant.

The present appeal does not involve the merits of issues related to the award of attorney's fees. The only relief sought by Appellant is a decision of this Court reversing Respondent's wrongful administrative dismissal of the appeal to the full commission and requiring Respondent to hear the appeal on the merits.

Accordingly, Appellant asks that the Court deny the motion to dismiss and allow this appeal to proceed with the Commission named as Respondent. In the alternative, Appellant has no objection to Claimant being substituted as Respondent if this Court concludes that is appropriate. Appellant agrees with Respondent that an attorney guardian ad litem should be appointed to represent Claimant's interests if she is named as Respondent.

Respectfully submitted,

PROFFITT & COX, LLP



David Proffitt, SC Bar # 11193
140 Wildewood Park Drive, Suite A
Columbia, S.C. 29223
Telephone: (803) 834-7097
Fax: (888) 711-1057
Email: dproffitt@proffittcox.com

Appellant

July 3, 2018

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

Misty A. Morris,

Claimant,

v.

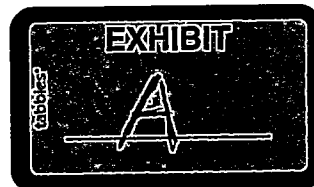
BB&T Corporation, d/b/a BB&T Bank
and Hartford Accident & Indemnity Co.

Employer/Carrier.

AFFIDAVIT

I, the undersigned, Misty A. Morris, being duly sworn, state under oath as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth in this affidavit to the extent specified herein and, if called as a witness, I could competently testify to these facts.
2. David Proffitt of Proffitt & Cox, LLP, represented me in this workers' compensation case.
3. I was injured on the job when I was exposed to mold at the BB&T branch office where I worked over a lengthy period of time. The Employer and Carrier denied coverage in my workers' compensation case.
4. I agreed to settle my case at mediation on a denied and disputed basis for a total award of \$109,900.00. In settling the case at mediation, there was no allocation made to the award; the Employer and Carrier simply agreed to pay me the negotiated amount.
5. I signed a Form 61 on April 25, 2017, authorizing my attorney to be paid a fee of \$36,633.33 and also to be reimbursed for advanced case costs of \$5,134.10.



6. I understand that my attorney may submit an invoice for attorney's fees to the Commission which are calculated on an hourly basis. Although the invoice for attorney's fees calculated on an hourly basis may exceed \$36,633.33, it is my understanding that my attorney will not ask the Commission to award him a fee of more than \$36,633.33.

7. I ask that the Commission approve payment of an attorney's fee of \$36,633.33 to my attorney, regardless of whether it is paid on a contingency or hourly basis. I also ask that the Commission approve payment of \$5,134.10 to my attorney to reimburse him for costs advanced in my case.

Further affiant sayeth not.

WITNESS my hand this 17th day of May, 2017, Lexington, South Carolina.



Misty A. Morris

SWORN TO and subscribed before me this
17th day of MAY, 2017.



Notary Public for the State of South Carolina
My commission expires 8/20/2020

Reply To
R. CLAIRE OWENS
Direct Dial: (803) 227-2209
claire.owens@mgclaw.com

November 21, 2017

VIA HAND DELIVERY

Valerie Deller
S.C. Workers' Compensation Commission
Judicial Department
P.O. Box 1715
Columbia, South Carolina 29202

RE: Misty A. Morris v. BB&T Corp. and Hartford Accident and Indemnity
Company c/o CorVel
Date of Accident: January 18, 2016
WCC File No.: 1600715
Our File No.: 20577.16010
Claim No.: 0452-WC-16-0000095

Dear Valerie:

Please be advised that our office is not involved in the ongoing issues of this claim, specifically the attorney's fee. Our involvement has ended as this case settled on a clincher on May 4, 2017. It is not necessary for the Claimant's attorney to continue to serve pleadings on the Defense as our file is closed.

If you have any questions, please feel free to give me a call.

Very truly yours,

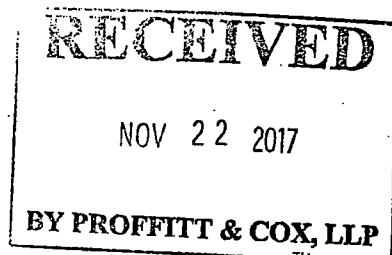


R. Claire Owens
Paralegal to M. Chad Abramson

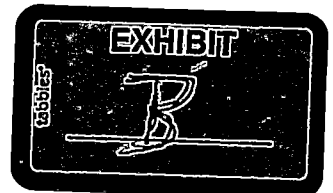
/rco
Enclosure
cc: David Proffitt, Esquire

SCANNED

Date: 11/21/17
Proffitt & Cox, LLP



1320 MAIN STREET, 10TH FLOOR
POST OFFICE BOX 12519
COLUMBIA, SC 29211



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Chair for the Commission

Appellate Case No. 2018-000532

Misty A. Morris,

Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank
and Hartford Accident & Indemnity Co.,

Employer/Carrier,

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Commission,

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PROOF OF SERVICE

I certify that I have served Appellant's Return to Respondent's Motion to Dismiss or For Substitution of Parties by depositing a copy of it in the United States Mail, postage prepaid, on July 3, 2018, addressed as follows:

J. Keith Roberts
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715

Misty A. Morris
107 Waverly Point Drive
Lexington, SC 29072

PROFFITT & COX, LLP



David Proffitt, SC Bar # 11193
140 Wildewood Park Drive, Suite A
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Email: dproffitt@proffittcox.com
Appellant

July 3, 2018

PROFFITT & COX

Attorneys at Law

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DAVID PROFFITT
dproffitt@proffittcox.com

July 3, 2018

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Misty A. Morris, Claimant v. BB&T Corporation, d/b/a BB&T Bank, Employer, and
Hartford Accident & Indemnity Co., Carrier,
IN RE: Attorney's Fee Petition of David Proffitt, Appellant v. S.C. Workers'
Compensation Commission, Respondent
Appellate Case No. 2018-000532
PC File No. 1464.01

Dear Ms. Kitchings:


Please find enclosed for filing the original and six copies of Appellant's Return to Respondent's Motion to Dismiss or For Substitution of Parties, including two exhibits, along with proof of service on Respondent and Misty A. Morris.

Please file the original and return the date-stamped copy to me in the enclosed envelope.

With kindest personal regards, I remain

Sincerely yours,

PROFFITT & COX, LLP



David Proffitt

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SC Court of Appeals

RDP/nif
Enclosures

cc: J. Keith Roberts (w/ enclosures)
Misty A. Morris (w/ enclosures)

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SC Court of Appeals

Proffitt and Cox, LLP
140 Wildewood Park Drive
Suite A
Columbia, SC 29223

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211



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