

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1116698
Appellate Case No. 2018-001294

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SC Court of Appeals

Ex Parte: Robert Horne, as Personal
Representative of the Estate of Gus A. King,
and Laura King Appellants,

In Re: Gus A. King, Claimant, ... Appellant,

v.

Pierside Boatworks, Employer,
and PMA Insurance Group, Carrier, ... Respondents.

RECORD ON APPEAL

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DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1116698

GUS A. KING,
Claimant,

vs.

PIERSIDE BOATWORKS,
Employer,

and

PMA INSURANCE GROUP,
Carrier.

Defendants.

HEARING:

Held in Columbia, South Carolina, on
March 29, 2018

APPEARANCES:

Claimant, deceased employee, was
represented at the hearing by Reese M.
Stidham, IV, Esquire, of Howell &
Christmas, LLC, Mount Pleasant, South
Carolina.

Claimant, Laura King, was represented by
Blake Hewitt, Esquire and Allison Sullivan,
Esquire, of Bluestein Thompson Sullivan,
LLC, Columbia, South Carolina.

Defendants were represented by R. Daniel
Addison, Esquire, of Hedrick Gardner
Kincheloe & Garofalo, LLP, Columbia,
South Carolina.

PURPOSE OF HEARING:

To determine issues set forth on Forms 50
and 51.

DECISION & ORDER:

Susan S. Barden, Commissioner

ORDER FILED:

May 1, 2018

STATEMENT OF THE CASE

This matter is before the undersigned Commissioner upon the Form 50, *Employee's Request for Hearing*, filed by counsel for the named employee/claimant, Gus King ("Deceased Employee"), on or about July 11, 2017. An additional Form 50, *Request for Hearing*, was filed on or about February 8, 2018 on behalf of the putative dependent of Deceased Employee, Laura King ("Claimant") and the Personal Representative of Deceased Employee's Estate, Robert Horne (the "Estate").¹ In their Form 50s, Deceased Employee and Claimant seek an order from the Commission enforcing an agreement reached at mediation between Deceased Employee (prior to his death) and his employer, Pierside Boatworks, and its carrier, PMA Insurance Group (collectively, "Defendants"). Defendants contend that the mediation agreement at issue is not enforceable on the grounds that it does not comport with the requirements of the South Workers Compensation Act (the "Act") and the Regulations of the South Carolina Workers Compensation Commission ("Commission") to be a binding and enforceable Agreement and Final Release.

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. Notices were timely and properly served upon all the parties of interest.
2. Venue, set in Richland County, is proper as agreed by all parties.
3. Claimant's average weekly wage is \$727.28, yielding a compensation rate of \$484.85 (Previous Order of the Commission, dated May 20, 2014).

¹ The Estate's right to intervene in this action has been previously ruled on by the Commission via an October 26, 2017 Order denying the Estate's Motion to Intervene, Postpone, and for an Order Requiring Mediation. Following the October 26, 2017 order, the Estate filed a Renewed Motion to Intervene on or about November 7, 2017. That motion was denied by order dated February 13, 2018. As such, the Estate is not a party to this action.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declarations or unstipulated medical.

APA SUBMISSIONS

Deceased Employee's APA

APA	DOCUMENT	DATE	PAGES
1	Order and Award	5/20/2017	1-30
2	Agreement Following Mediation Conference	6/2/2016	31
3	Form 70, Mediatory Report	6/2/2016	32
4	Email from Employer/Carrier Scheduling Mediation	3/11/2016	33-35
5	Email from Employer/Carrier confirming date/location of Mediation	4/5/2016	36-43
6	Email from Mediator's Office confirming date/location of Mediation	4/5/2016	44-45
7	Email from Employer/Carrier Requesting Claimant's Attorney's Tax ID in Order to Issue Settlement Check	6/3/2016	46
8	Email from Employer/Carrier to Claimant's attorney Advising They Are Stop Paying on Claimant's Settlement Check	6/14/2016	47
9	Letter from Employer/Carrier Enclosing Claimant's Gross Settlement Check and Form 19	6/9/2016	48-50

Claimant's APA

APA	DOCUMENT	DATE	PAGES
A	Claimant's Marriage License	--	1
A	Legal Memorandum supporting the enforcement of the mediation agreement	3/14/2018	1-6

Defendants' APA

APA	DOCUMENT	DATE	PAGES
--	Memorandum of Law	12/13/2017	14
--	Reply Brief	3/26/2018	6

EVIDENCE OF CASE

The facts in this case are essentially undisputed. The underlying claim involves an admitted injury to Deceased Employee that occurred on November 18, 2011. Pursuant to an Award and Order issued May 20, 2014, Deceased Employee was found to be permanently and totally disabled as a result of his injuries and entitled to lifetime future causally-related medical care and treatment. See Deceased Employee's APA 1, pp 25-26, Finding of Fact No. 12. Deceased Employee was awarded a lump sum award of his permanent and total disability benefits and a Form 19, *Status Report and Compensation Receipt*, was filed on September 10, 2014, showing that Defendants had paid Deceased Employee all indemnity benefits to which he was entitled and the claim was closed. Defendants, thereafter, continued to provide Deceased Employee with the causally-related medical care to which he was entitled under the May 20, 2014 order.

A mediation between Deceased Employee and Defendants was held on June 2, 2016, for the purpose of resolution and settling out Deceased Employee's future medical treatment. At the conclusion of the mediation, the parties signed an Agreement Following Mediation Conference ("Mediation Agreement") memorializing the general terms of the negotiated settlement. See Deceased Employee's APA 2. The Mediation Agreement specifically provided: "The employer/carrier will prepare an Agreement and Release, releasing all parties or entities from all claims by the claimant which will be signed by the claimant and claimant's attorney." One week later, on or about June 9, 2016, Claimant was killed in an unrelated motor vehicle accident. No Agreement and Final Release (clinch) was ever signed or filed with the Commission. After learning of the death of Deceased Employee, Defendants notified Deceased Employee's attorney that they were placing the settlement on hold to determine how to proceed. Deceased

Employee's APA 8, p. 47. Defendants later withdrew from the settlement on the grounds that Deceased Employee's claim abated at his death.

Prior to the hearing, Defendants submitted a Memorandum of Law in support of their position. As part of her Form 58, *Pre-hearing Brief*, Claimant submitted a Brief on Enforcement of Settlement Agreement to which Defendants submitted a Reply Brief.

Based on the pleadings, memoranda, and review of the record as a whole, I, the undersigned Commissioner, make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Gus King ("Deceased Employee") was found permanently and totally disabled by previous Order of the Commission, dated May 20, 2014, and therefore received 500 weeks of compensation and lifetime future medical care. This finding is supported by the Commission file as a whole and, specifically, the May 20, 2014 Decision and Order.

2. Claimant received his indemnity award in lump sum on September 10, 2014. This finding is supported by the Commission file and, specifically, the Form 19, *Status Report and Compensation Receipt*, filed on September 10, 2014.

3. Subsequently, the parties engaged in mediation on June 2, 2016, to settle the issue of Claimant's future medical care. This finding is supported by the record as a whole, including but not limited to the briefs of the parties.

4. Although the parties signed a mediation agreement on that date, no Agreement and Final Release was ever executed/signed by Deceased Employee. This finding is supported by the record as a whole, including but not limited to the briefs of the parties.

5. Deceased Employee died in an unrelated car accident on June 9, 2016. This finding is supported by the record as a whole, including but not limited to the briefs of the parties.

6. Because Deceased Employee never signed an Agreement and Final Release, no Agreement and Final Release was ever filed with the Commission in accordance with S.C. Code Ann. § 42-9-390 and S.C. Code Regs. 67-801 and 67-803.

7. I find that parties are always free to “back out of” a proposed clincher agreement until it is signed, whether a claimant is unrepresented or represented. Nothing in Title 42 of the South Carolina Code or the applicable regulations state otherwise.

8. Claimant’s argument that filing of an Agreement and Final release is merely a ministerial or perfunctory act is not persuasive, as no Agreement and Release was ever signed by Deceased Employee.

9. The Mediation Agreement memorialized what the parties agreed to at mediation. Nothing in the mediation regulations states that once a mediation agreement is signed, it is binding upon the parties. See S.C. Code Regs. 67-1801 *et seq.* I decline to create new law where such does not exist.

10. A mediation agreement is not synonymous with an Agreement and Final Release. If this were the case, for example, S.C. Code Regs. 67-801(A) would state that parties can agree to settle their claims by entering into a mediation agreement. Nor does S.C. Code Regs. 67-1801 *et seq.* provide that mediation agreements can be utilized in lieu of a Form 16 or an Agreement and final Release.

11. The Commission is without authority to enforce the Mediation Agreement. Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) (“An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose.”)

12. Filing a settlement document is an explicit statutory requirement under South Carolina law. See S.C. Code Ann. § 42-9-390 (“The employer must file a copy of the settlement agreement with the commission . . .”)(emphasis added). In this case, however, there was nothing to file, as an Agreement and Final Release was never executed. See S.C. Code Regs 67-803 (Specifying the requirements for an agreement to constitute an Agreement and Final Release).

13. In support of the contention that the Mediation Agreement is enforceable, Claimant relies various authorities from jurisdictions outside of South Carolina. These authorities, however, are distinguishable from this case and do not support Claimant’s position.

14. In B. Frank Joy Co. v. Isaac, 636 A.2d 1016 (Md. 1993), the employee and employer entered into a settlement agreement and submitted that agreement to the commission for approval. This settlement agreement was submitted to the commission for approval as required by the statute. The claimant died eight days before the hearing. At the hearing, the employer sought to rescind the agreement arguing they had that right at any time before it was approved by the Commission. The commission nevertheless approved the agreement. In affirming this decision, the court noted that the Maryland statute required approval of an agreement in order to be enforceable but stated:

That does not mean, however, that the parties have total freedom to renege a valid bilateral agreement they have formally submitted for Commission approval in compliance with the Act. When they present a duly executed settlement agreement to the Commission, the parties thereby relinquish control of the matter to the

supervisory powers, authority, and discretion bestowed upon the Commission.

Then a party, acting unilaterally, does not have unfettered license to withdraw what that party has submitted in good faith.

Isaac, 636 A.2d at 1025 (emphasis added).

15. In Ferreira v. Arrow Mut. Liability Ins. Co., 447 N.E.2d 1258 (Mass. App. Ct. 1983), the court held:

Barring mutual mistake, fraud or other principles of equity, we believe that when an instrument with the finality of an agreement for redeeming liability has been executed and filed with the Division, presented to the single member for approval at a hearing conference, and recommended for approval by that member, the insurer may no longer unilaterally rescind the agreement.

Ferreira, 447 N.E.2d at 1259-60 (emphasis added).

16. Defendants' position, on the other hand, is supported by Mackey v. Kerr-McGee Chemical, Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). As stated in that case, "Certainly, an employee or his dependents who had agreed to accept a settlement could withdraw from that agreement at any time prior to verification and filing, and we see no reason why the employer and his insurer cannot do the same thing." Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (quoting with approval, Pepitone v. State Farm Mut. Ins. Co., 346 So. 2d 266 (La. Ct. App. 1977)) (emphasis added). While this case was decided prior to the 2007 amendments to the Workers Compensation Act removing the specific requirement of Commission approval when a party is represented, the reasoning remains the same: until a settlement agreement is entered into and filed with the Commission, either party retains the right to withdraw from the agreement.

17. The fact that the agreement at issue here arises out of a mediation does not alter this outcome. Nothing in the mediation regulations state that a mediation agreement is tantamount to or satisfies the statutory and regulatory requirements of an Agreement and Final Release. See S.C. Code Regs. 67-1801 *et. seq.*

18. The Commission is a statutory creation, and as such the Commission and the parties are governed by statutory and regulatory provisions of Title 42 of the South Carolina Code. This is not a circuit court contract case and principle of contract law have no application in this context. See Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (“Contract law principles are inapplicable here because § 42-1-310 provides that employee claims for compensation are governed exclusively by the worker’s compensation act.”).

19. The settlement agreement reached at mediation in this case was never memorialized in an Agreement and Final Release, never signed, and never filed with the Commission. The Commission has no authority to enforce an agreement that does not comply with the specific terms of the Act and, in fact, is specifically prohibited from doing so. See S.C. Code Regs. §67-803(C) (“The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act.”)

20. I find that the Mediation Agreement at issue in this case does not satisfy the requirements of the Workers Compensation Act to constitute an Agreement and Final Release and may not be construed as one. As no Agreement and Final Release was signed or filed with the Commission, the Commission is without the statutory authority to enforce an agreement reached at mediation. Prior to the signing and filing of an Agreement and Final Release, each party retained the right to rescind any settlement negotiated at mediation, as was done by Defendants in this case.

21. At the time of his death, Deceased Employee had received all benefits for compensation to which he was entitled under the Act and his right to receive future medical care abated at his death. As such, no benefits remain to accrue to the benefit of any other party under the Act.

22. For the foregoing reasons, the relief sought by Claimant and Deceased Employee is denied.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, as amended, §42-17-40, it is the determination of this Commissioner that:

1. This case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.

2. Under §42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.

3. Under §42-1-130, Deceased Employee Gus A. King was a covered employee.

4. Under §42-1-140, Pierside Boatworks was a covered employer.

5. Under §42-3-150, there was an employer/employee relationship between the parties.

6. Under §42-17-20, venue in Richland County, South Carolina, was proper and agreed to by the parties.

7. Under §-1-23-320(b) and Regulation 67-607, notice of hearing was timely and properly served upon all parties of interest.

8. Under §42-1-160, as determined by prior order of the Commission, the Deceased Employee, Gus A. King, sustained a compensable injury by accident arising out of and in the course of his employment.

9. Under §42-1-40, as determined by prior order of the Commission, Deceased Employee's average weekly wage is \$727.28, yielding a compensation rate of \$484.85.

10. Under S.C. Code Ann. § 42-9-390 and S.C. Code Regs. 67-801 and 67-803, no Agreement and Final Release was ever signed by Deceased Employee or filed by the Employer with the Commission and, thus, there is no binding Agreement and Final Release to enforce.

11. Pursuant to the Workers Compensation Act, including but not limited to S.C. Code Ann. § 42-9-390 and S.C. Code Regs. 67-801 and 67-803, the Commission lacks the authority to enforce the Mediation Agreement as requested by Deceased Employee and Claimant.

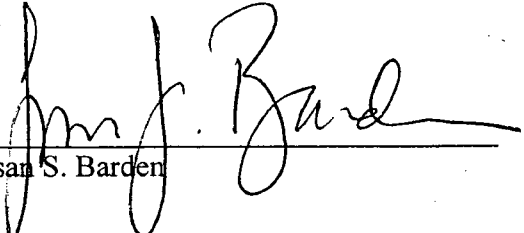
12. As Deceased Employee had received all compensation to which he was entitled prior to his death, any remaining benefits to which he may have been entitled to under the Act abated at his death.

ORDER

For the foregoing reasons, I find that Mediation Agreement in this case does not constitute a binding Agreement and Final Release and the Commission has no authority to enforce it as if it is one. I, therefore, order that the relief requested by Deceased Employee and Claimant be DENIED, no further benefits are owed by Defendants in this claim, and the claim should be closed.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Susan S. Barden

May 1, 2018

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Barbara Skarbek on May 1, 2018

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No. 1116698

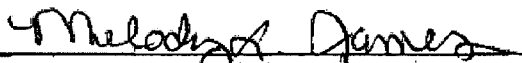
Gus A. King,	)	
	)	
Claimant,	)	
	)	
v.	)	
	)	
Pierside Boatworks,	)	
	)	ORDER GRANTING MOTION TO ADD
Employer,	)	ESTATE AS A PARTY
	)	
and	)	
	)	
PA Manufacturers Assn. Ins. Co.,	)	
	)	
Carrier,	)	
Defendants.	)	

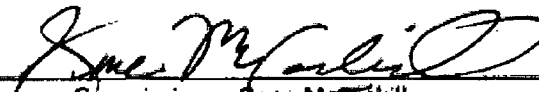
This order concerns a request to add a party to this claim. The Commission issued an order August 27, 2018 explaining the motion would be addressed by the appellate panel.

The motion to allow the estate to intervene is granted. If the Claimant is entitled to the contested amounts, the amounts are arguably accrued before the date of his death. By analogy, See Larson's Section 89.02 as to accrued compensation payments being an asset of an estate.

IT IS HEREBY ORDERED that Bob Horne, as personal representative of the Estate of Gus A. King, be added as a party.

South Carolina Workers' Compensation Commission


Commissioner Melody L. James


Commissioner Gene McCaskill


Commissioner R. Michael Campbell, II

Columbia, South Carolina
4-23, 2019

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE No. 1116698**

GUS A. KING (deceased),)
 Claimant,)
))
vs.)
))
PIERSIDE BOATWORKS,)
 Employer,)
))
and)
))
PMA INSURANCE GROUP,)
 Carrier,)
))
 Defendants.)
_____)

**AMENDED
DECISION & ORDER
OF THE
APPELLATE PANEL OF THE
FULL COMMISSION**

STATEMENT OF THE CASE

This matter was brought before the South Carolina Workers' Compensation Commission and the Single Commissioner on March 29, 2018, pursuant to Form 50s, *Employee's Request for Hearing*, filed by counsel for the named employee/claimant, Gus King ("Deceased Employee") and separately by the putative dependent of Deceased Employee, Laura King ("Claimant") and the Personal Representative of Deceased Employee's Estate, Robert Home (the "Estate").¹ In their Form 50s, Deceased Employee and Claimant seek an order of this Commission enforcing an agreement reached at mediation between Deceased Employee (prior to his death) and his employer Pierside Boatworks and its carrier PMA Insurance Group (collectively "Defendants"). In response, Defendants took the position that the mediation agreement at issue is not enforceable on

¹ The Estate's right to intervene in this action has been previously ruled on by the Commission via an October 26, 2017 Order denying the Estate's Motion to Intervene, Postpone, and for an Order Requiring Mediation. Following the October 26, 2017 Order, the Estate filed a Renewed Motion to Intervene on or about November 7, 2017. That Motion was denied by Order dated February 13, 2018. Subsequently, The Estate filed another renewed Motion to Intervene which is being addressed by a separate order of this Panel.

the grounds that it does not comport with the requirements of the South Carolina Workers' Compensation Act (the "Act") and the Regulations of the South Carolina Workers' Compensation Commission ("Commission") to be a binding and enforceable Agreement and Final Release.

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. Notices were timely and properly served upon all parties of interest.
2. Venue, set in Richland County, was proper as agreed by all parties.
3. Deceased Employee's average weekly wage is \$727.28, yielding a compensation rate of \$484.85, pursuant to prior Order of the Commission, dated May 20, 2014.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declarations or unstipulated medical.

APA SUBMISSIONS

Deceased Employee's APA

- APA No. 1 Order and Award, dated May 20, 2014, consisting of thirty (30) pages.
- APA No. 2 Agreement Following Mediation Conference, dated June 2, 2016, consisting of one (1) page.
- APA No. 3 Form 70, Mediatory Report, dated June 2, 2016, consisting of one (1) page.
- APA No. 4 Email from Employer/Carrier scheduling Mediation, dated March 11, 2016, consisting of three (3) pages.
- APA No. 5 Email from Employer/Carrier confirming date/location of Mediation, dated April 5, 2016, consisting of eight (8) pages.
- APA No. 6 Email from Mediator's Office confirming date/location of Mediation, dated April 5, 2016, consisting of two (2) pages.
- APA No. 7 Email from Employer/Carrier requesting Claimant's Attorney's tax ID in order to issue settlement check, dated June 3, 2016, consisting of one (1) page.

APA No. 8 Email from Employer/Carrier to Claimant's Attorney advising they are stop-paying on Claimant's settlement check, dated June 14, 2016, consisting of one (1) page.

APA No. 9 Letter from Employer/Carrier enclosing Claimant's gross settlement check and Form 19, dated June 9, 2016, consisting of three (3) pages.

Claimant's APA

APA No. 10 Claimant's Marriage License, consisting of one (1) page.

APA No. 11 Legal Memorandum supporting the enforcement of the mediation agreement, dated March 14, 2018, consisting of six (6) pages.

Defendants' APA

APA No. 12 Memorandum of Law, dated December 13, 2017, consisting of fourteen (14) pages

APA No. 13 Reply Brief, dated March 26, 2018, consisting of six (6) pages.

EVIDENCE OF THE CASE

The facts in this case are essentially undisputed. The underlying claim involves an admitted injury to Deceased Employee that occurred on November 18, 2011. Pursuant to an Award and Order issued May 20, 2014, Deceased Employee was found to be permanently and totally disabled as a result of his injuries and entitled to lifetime future causally-related medical care and treatment. See Deceased Employee's APA 1, pp 25-26, Finding of Fact No. 12. Deceased Employee was awarded a lump sum award of his permanent and total disability benefits and a Form 19, *Status Report and Compensation Receipt*, was filed on September 10, 2014, showing that Defendants had paid Deceased Employee all indemnity benefits to which he was entitled and the claim was closed. Defendants, thereafter, continued to provide Deceased Employee with the causally-related medical care to which he was entitled under the May 20, 2014 order.

A mediation between Deceased Employee and Defendants was held on June 2, 2016,

for the purpose of resolution and settling out Deceased Employee's future medical treatment. At the conclusion of the mediation, the parties signed an Agreement Following Mediation Conference ("Mediation Agreement") memorializing the general terms of the negotiated settlement. See Deceased Employee's APA 2. The Mediation Agreement specifically provided: "The employer/carrier will prepare an Agreement and Release, releasing all parties or entities from all claims by the claimant which will be signed by the claimant and claimant's attorney." One week later, on or about June 9, 2016, Claimant was killed in an unrelated motor vehicle accident. No Agreement and Final Release (clinch) was ever signed or filed with the Commission. After learning of the death of Deceased Employee, Defendants notified Deceased Employee's attorney that they were placing the settlement on hold to determine how to proceed. Deceased Employee's APA 8, p. 47. Defendants later withdrew from the settlement on the grounds that Deceased Employee's claim abated at his death.

Prior to the hearing, Defendants submitted a Memorandum of Law in support of their position. As part of her Form 58, *Pre-hearing Brief*, Claimant submitted a Brief on Enforcement of Settlement Agreement to which Defendants submitted a Reply Brief

Based on the pleadings, memoranda, and review of the record as a whole, I, the undersigned Commissioner, make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Gus King ("Deceased Employee") was found permanently and totally disabled by previous Order of the Commission, dated May 20, 2014, and therefore received 500 weeks of compensation and lifetime future medical care. This finding is supported by the Commission file as a whole and, specifically, the May

20, 2014 Decision and Order.

2. Claimant received his indemnity award in lump sum on September 10, 2014. This finding is supported by the Commission file and, specifically, the Form 19, *Status Report and Compensation Receipt*, filed on September 10, 2014.
3. Subsequently, the parties engaged in mediation on June 2, 2016, to settle the issue of Claimant's future medical care. This finding is supported by the record as a whole, including but not limited to the briefs of the parties.
4. Although the parties signed a mediation agreement on that date, no Agreement and Final Release was ever executed/signed by Deceased Employee. This finding is supported by the record as a whole, including but not limited to the briefs of the parties.
5. Deceased Employee died in an unrelated car accident on June 9, 2016. This finding is supported by the record as a whole, including but not limited to the briefs of the parties.
6. Because Deceased Employee never signed an Agreement and Final Release, no Agreement and Final Release was ever filed with the Commission in accordance with S.C. Code Ann. § 42-9-390 and S.C. Code Regs. 67-801 and 67-803.
7. That the parties are always free to "back out of" a proposed clincher agreement until it is signed, whether a claimant is unrepresented or represented. Nothing in Title 42 of the South Carolina Code or the applicable regulations state otherwise.
8. Claimant's argument that filing of an Agreement and Final release is merely a

ministerial or perfunctory act is not persuasive, as no Agreement and Release was ever signed by Deceased Employee.

9. The Mediation Agreement memorialized what the parties agreed to at mediation. Nothing in the mediation regulations states that once a mediation agreement is signed, it is binding upon the parties. See S.C. Code Regs. 67-1801 *et seq.* The Single Commissioner specifically declined to create new law where such does not exist.
10. A mediation agreement is not synonymous with an Agreement and Final Release. If this were the case, for example, S.C. Code Regs. 67-801(A) would state that parties can agree to settle their claims by entering into a mediation agreement. Nor does S.C. Code Regs. 67-1801 *et seq.* provide that mediation agreements can be utilized in lieu of a Form 16 or an Agreement and final Release.
11. The Commission is without authority to enforce the Mediation Agreement. *Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) ("An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose.")
12. Filing a settlement document is an explicit statutory requirement under South Carolina law. See S.C. Code Ann. § 42-9-390 ("The employer must file a copy of the settlement agreement with the commission ... ") (emphasis added). In this case, however, there was nothing to file, as an Agreement and Final Release was never executed. See S.C. Code Regs 67-803 (Specifying the requirements for an agreement to constitute an Agreement and Final Release).

13. In support of the contention that the Mediation Agreement is enforceable, Claimant relies on various authorities from jurisdictions outside of South Carolina. These authorities, however, are distinguishable from this case and do not support Claimant's position.
14. In *B. Frank Joy Co. v. Isaac*, 636 A.2d 1016 (Md. 1993), the employee and employer entered into a settlement agreement and submitted that agreement to the commission for approval. This settlement agreement was submitted to the commission for approval as required by the statute. The claimant died eight days before the hearing. At the hearing, the employer sought to rescind the agreement arguing they had that right at any time before it was approved by the Commission. The commission nevertheless approved the agreement. In affirming this decision, the court noted that the Maryland statute required approval of an agreement in order to be enforceable but stated:

That does not mean, however, that the parties have total freedom to renege a valid bilateral agreement they have formally submitted for Commission approval in compliance with the Act. When they present a duly executed settlement agreement to the Commission, the parties thereby relinquish control of the matter to the supervisory powers, authority, and discretion bestowed upon the Commission. Then a party, acting unilaterally, does not have unfettered license to withdraw what that party has submitted in good faith.

Isaac, 636 A.2d at 1025 (emphasis added).

15. In *Ferreira v. Arrow Mut. Liability Ins. Co.*, 447 N.E.2d 1258 (Mass. App. Ct. 1983), the court held:

Barring mutual mistake, fraud or other principles of equity, we believe that when an instrument with the finality of an agreement for redeeming liability has been executed and filed with the Division, presented to the single member for approval at a hearing

conference, and recommended for approval by that member, the insurer may no longer unilaterally rescind the agreement.

Ferreira, 447 N.E.2d at 1259-60 (emphasis added).

16. Defendants' position, on the other hand, is supported by *Mackey v. Kerr-McGee Chemical, Co.*, 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). As stated in that case, "Certainly, an employee or his dependents who had agreed to accept a settlement could withdraw from that agreement at any time prior to verification and filing and we see no reason why the employer and his insurer cannot do the same thing." *Mackey*, 280 S.C. at 270, 312 S.E.2d at 568 (quoting with approval, *Pepitone v. State Farm Mut. Ins. Co.*, 346 So. 2d 266 (La. Ct. App. 1977)) (emphasis added). While this case was decided prior to the 2007 amendments to the Workers Compensation Act removing the specific requirement of Commission approval when a party is represented, the reasoning remains the same: until a settlement agreement is entered into and filed with the Commission, either party retains the right to withdraw from the agreement.
17. The fact that the agreement at issue here arises out of a mediation does not alter this outcome. Nothing in the mediation regulations state that a mediation agreement is tantamount to or satisfies the statutory and regulatory requirements of an Agreement and Final Release. See S.C. Code Regs. 67-1801 *et. seq.*
18. The Commission is a statutory creation, and as such the Commission and the parties are governed by statutory and regulatory provisions of Title 42 of the South Carolina Code. This is not a circuit court contract case and principle of contract law have no application in this context. *See Mackey*, 280 S.C. at 270, 312

S.E.2d at 568 ("Contract law principles are inapplicable here because § 42-1-310 provides that employee claims for compensation are governed exclusively by the worker's compensation act.").

19. The settlement agreement reached at mediation in this case was never memorialized in an Agreement and Final Release, never signed, and never filed with the Commission. The Commission has no authority to enforce an agreement that does not comply with the specific terms of the Act and, in fact, is specifically prohibited from doing so. See S.C. Code Regs. §67-803(C) ("The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act.")
20. The Single Commissioner Found that the Mediation Agreement at issue in this case does not satisfy the requirements of the Workers Compensation Act to constitute an Agreement and Final Release and may not be construed as one. As no Agreement and Final Release was signed or filed with the Commission, the Commission is without the statutory authority to enforce an agreement reached at mediation. Prior to the signing and filing of an Agreement and Final Release, each party retained the right to rescind any settlement negotiated at mediation, as was done by Defendants in this case.
21. At the time of his death, Deceased Employee had received all benefits for compensation to which he was entitled under the Act and his right to receive future medical care abated at his death. As such, no benefits remain to accrue to the benefit of any other party under the Act.

22. For the foregoing reasons, the relief sought by Claimant and Deceased Employee is denied.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, as amended, §42-17-40, it is the determination of this Commissioner that:

1. This case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Under §42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
3. Under §42-1-130, Deceased Employee Gus A King was a covered employee.
4. Under §42-1-140, Pierside Boatworks was a covered employer.
5. Under §42-3-150, there was an employer/employee relationship between the parties.
6. Under §42-17-20, venue in Richland County, South Carolina, was proper and agreed to by the parties.
7. Under §-1-23-320(b) and Regulation 67-607, notice of hearing was timely and properly served upon all parties of interest.
8. Under §42-1-160, as determined by prior order of the Commission, the Deceased Employee, Gus A King, sustained a compensable injury by accident arising out of and in the course of his employment.

9. Under §42-1-40, as determined by prior order of the Commission, Deceased Employee's average weekly wage is \$727.28, yielding a compensation rate of \$484.85.
10. Under S.C. Code Ann. § 42-9-390 and S.C. Code Regs. 67-801 and 67-803, no Agreement and Final Release was ever signed by Deceased Employee or filed by the Employer with the Commission and, thus, there is no binding Agreement and Final Release to enforce.
11. Pursuant to the Workers Compensation Act, including but not limited to S.C. Code Ann. § 42-9-390 and S.C. Code Regs. 67-801 and 67-803, the Commission lacks the authority to enforce the Mediation Agreement as requested by Deceased Employee and Claimant.
12. As Deceased Employee had received all compensation to which he was entitled prior to his death, any remaining benefits to which he may have been entitled to under the Act abated at his death.

ORDER OF THE SINGLE COMMISSIONER

For the foregoing reasons, the Single Commissioner that Mediation Agreement in this case does not constitute a binding Agreement and Final Release and the Commission has no authority to enforce it as if it is one. The Single Commissioner, therefore, ordered that the relief requested by Deceased Employee and Claimant be DENIED, no further benefits are owed by Defendants in this claim, and the claim should be closed.

ISSUES ON APPEAL

Claimant and Deceased Employee filed a timely appeal of the Order of the Single Commissioner. The issues raised on appeal were, in pertinent part, whether the Single

Commissioner erred in her findings of fact and conclusions of law that the agreement following the mediation in this matter was unenforceable since no Agreement and Final Release had been executed and that the Commission was without authority to enforce the agreement reached at mediation. Claimant and Deceased Employee further took issue with the Single Commissioner's findings of fact and conclusion of law that Deceased Employee had, at the time of his death, received all benefits to which he was entitled and alleged that Claimant, as the beneficiary of Deceased Employee's Estate, had the same rights to enforce the agreement to settle as Deceased Employee had before his death.

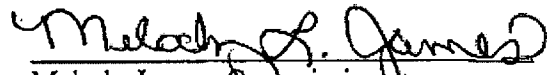
ORDER OF THE FULL COMMISSION

After careful consideration of the evidence in the record, the briefs of each party on appeal, and oral arguments; it is the determination of the Appellate Panel of the Full Commission that the Order of the Single Commissioner is fully affirmed. The findings of fact and conclusions of law of the Single Commissioner are adopted by the Appellate Panel and carry full force as if restated herein verbatim.

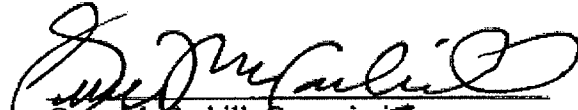
THEREFORE IT IS SO ORDERED, ADJUDGED, AND DECREED based upon the foregoing, that Mediation Agreement in this case does not constitute a binding Agreement and Final Release and the Commission has no authority to enforce it as if it is one. The relief requested by Deceased Employee and Claimant is DENIED, no further benefits are owed by Defendants in this claim, and the claim should be closed.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Melody James, Commissioner


Michael Campbell, Commissioner


Gene McCaskill, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on April 30, 2019

South Carolina Workers' Compensation Commission
1612 Marion St * PO BOX 1715
Columbia, South Carolina 29202-1715
(803)737-5723



WCC File #: 1116698
Carrier File #: W000383676
Carrier Code #: 394
Employer FEIN #:

Claimant's Name: GUS KING SSN: [REDACTED] Employer's Name: PIERSE BOATWORKS
Address: [REDACTED] Address: C/O JOHN BROPHY 1300 PIERSE STR
City: JOHNS ISLAND State: SC Zip: [REDACTED] City: North Charleston State: SC Zip: 29405
Home Phone: [REDACTED] Work Phone: Insurance Carrier: PA Mfr's Assn Insurance Company
Preparer's Name: Anthony Balding Law Firm: Phone #: (888)476-2669

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of weeks T.T.	TT	11/19/2011	06/27/2014	\$ 67,222.40
2. Number of weeks T.P.				\$
3. Number of weeks P.P.				\$
4. Disfigurement				\$
5. Agreement and Final Release				\$ 148,165.69
Total Compensation Paid				\$ 215,388.09
6. Total Medical Benefits* Paid				\$ 1,340,931.50
7. Funeral Benefits				\$

☐ Case Denied

Date of Injury: 11/18/2011
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: [Signature] Claimant By: [Signature] Employer's Representative

06/24/2014

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	\$
B. Attorney's Fee Paid by Employer	\$
C. Attorney's Fee Paid by Claimant (Non contingent fees, only)	\$

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.

WCC FORM #19
REV. DATE 3/96

19

STATUS REPORT AND COMPENSATION RECEIPT

RECEIVED

SEP 10 2014

FRONT DESK
SC Workers' Comp Comm

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
P. O. Box 1715 * 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File #: 1116698

Carrier File #:

Carrier Code #:

Employer FEIN #:

Claimant's Name: Gus Allen King SSN: [REDACTED]

Employer's Name: Pierside Boatworks

Address: [REDACTED]

Address: 1300 Pierside Street

City: Johns Island State: SC Zip: [REDACTED]

City: North Charleston State: SC Zip: 29405

Home Phone: [REDACTED] Work Phone: ()

Insurance Carrier: PMA Insurance Group

Preparer's Name: Gary Christmas Law Firm: Howell & Christmas, LLC

Preparer's Phone Number: (843) 849-2800

A Claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: November 18, 2011

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Injury ☐ Physical Brain Damage ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to his whole body, including, but not limited to cervical spine, right shoulder (aggravated arthritis), right upper extremity, left upper extremity, thoracic spine, lumbar spine (including muscle spasms and the injury to his spine at L5-S1, L4-L5 and L3-L4), bilateral lumbar radiculopathy, sacrum, bursitis, pelvis, pelvic bones, ilium bones, pubic symphysis, umbilical hernia, right hip, right lower extremity, left hip, left lower extremity, left knee, left foot, left ankle, left heel, left heel spur, bottom of left foot (including plantar fascial fibromatosis), arthropathy, bursitis, pelvis (including nerve injuries and crush injuries), pelvic bones, ilium bones, pubic symphysis, erectile dysfunction, umbilical hernia, chest (wheezing in chest), bacterial pneumonia, headaches, trachea (tracheostomy), lungs, heart (including blood clots in his heart), respiratory failure, left internal artery, right superior gluteal artery, abdomen, large abdominal midland scar with deformation of the abdominal wall, severe constipation (due to narcotic bowel syndrome and post operative changes after severe pelvic injury requiring surgical treatment with colonoscopy and ileo conduit), gastrointestinal tract injury, gastrointestinal system (including the stomach, small intestines and the large intestines), gastrointestinal tract injury with open wound into cavity, partial obstruction of bowels, scrotum, anus, rectum, perineum, urethra (including urethra injury with open wound into cavity), skin loss (where colonoscopy bag placement is implanted), bladder, pancreas, stomach, spleen, liver, prostate, gallbladder, kidneys, aggravated diabetes, aggravated arthritis, anxiety, depression and insomnia, on November 18, 2011 in Charleston, state of South Carolina.
2. Briefly describe how the accident occurred: While working on a large forklift, the engine engaged and ran over Claimant.
3. Both the Claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the employer on 11/18/11 in the following manner: Claimant informed employer.
- ☐ 7. Due to injury, the Claimant is in need of (check one):
☐ (a) medical examination and treatment for:
☐ (b) additional medical examination and treatment for:
- ☐ 8. Due to injury, the Claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
- ☒ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☒ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
- ☐ 9a. ☐ A determination of permanent disability is premature at this time.
10. Due to the injury, the Claimant as a serious bodily disfigurement consisting of: See number 1 above.
- 10a. At the time of injury, the Claimant was paid weekly wages of \$, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: Upon information and belief, employer.
11. Further grounds or unusual aspects of Claim:
Claimant was injured at work on November 18, 2011, when he was working on and underneath a large forklift when the engine engaged unexpectedly and ran over Claimant causing severe and catastrophic work-related injuries. Claimant's case was Mediated on June 2, 2016. At said Mediation on June 2, 2016, Claimant settled his workers' compensation case via Agreement Following Mediation Conference. The Form 70 - Mediator Report, was filed with the S.C. Workers' Compensation Commission on

June 2, 2016. Claimant passed away on or about June 9, 2016, from injuries he sustained in a car accident which was unrelated to his workers' compensation case. Claimant requests that the Settlement Agreement entered into by the Parties at Mediation (1) be filed and made part of the record in this case; and (2) that the settlement agreed to in the Mediation be enforced by the South Carolina Workers' Compensation Commission. Claimant is seeking attorney's fees and case costs for litigating Claimant's claim. Claimant requests a lump sum payment of any award. To determine whether Claimant is entitled to any and all other benefits due under the Act.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Claimant is deceased now, but for his work-related accident he treated with the following: Roper St. Francis Hospital, 2095 Henry Tecklenburg Drive, Charleston SC 29414, Carolinas Hospital System, 805 Pamlico Highway, Florence SC 29505-6050, Healthsouth Rehab Hospital, 900 E. Cheves Street, Florence SC 29506, McLeod Regional Medical Center- Florence, 555 E. Cheves Street, Florence SC 29506, Personal Care Physical Therapy, 3546 Maybank Highway, Johns Island SC 29455, Dr. Neven Hadzizahic, Charleston GI 1962 Charlie Hall Boulevard, Charleston SC 29414, Dr. Langdon Hartsock, MUSC Bone and Joint Center, 2125 Charlie Hall Boulevard Charleston, SC 29414, Stuart Leon, MUSC, 96 Johnathan Lucas Street, Charleston SC 29425, MUSC, MUSC - Health Information 169 Ashley Avenue, MSC 349, Charleston SC 29425-3490, Theodore Pappas, MD, St. Luke's Family Practice, 1435 Stuart Engals Blvd. Mt. Pleasant SC 29464.

11b. To the best of your knowledge, did you have any prior permanent disability? Upon information and belief, none.
If yes, describe:

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13 a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13 b. I am requesting a hearing. A \$25.00 fee is required.

☒ Mediation

☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

☐ b. Mediation is required pursuant to Reg. 67-1802.

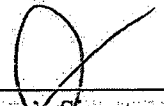
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☒ d. Mediation has been conducted by a duly qualified mediator and resulted in settlement prior to Claimant's death.

Questions regarding Mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Paul J Doolittle, Attorney At Law, PO Box 2579, Mount Pleasant SC 29464; and R. Daniel Addison, Hedrick Gardner Kincheloe & Garofalo, P.O. Box 11267, Columbia SC 29211, on the 10th day of July, 2017, by: ☒ first class postage ☐ certified mail ☐ personal service.

	Attorney For Claimant	gc@howellandchristmas.com	July 11, 2017
Preparer's Signature	Title	E-Mail	Date

Questions about the use of this form should be directed the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC FORM # 50

Rev. Date 7/13

50

Employee's Notice of Claim
and/or Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700 www.wcc.sc.gov

WCC File # 1116698
Carrier File #
Carrier Code #
Employer FEIN

Gus A. King
Claimant's Name

SSN

Pierside Boatworks
Employer's Name

P.O. Box 1537
Address

John's Island, SC

City

State

Zip

c/o John Brophy

North Charleston, SC 29405

City

State

Zip

Home Phone

Work Phone

PMA Insurance Group
Insurance Carrier

Date of Injury: 11/18/2011

R. Daniel Addison Hedrick Gardner Kincheloe & Garofalo LLP 803-727-1201
Preparer's Name Phone #

Date of Injury or Illness: 11/18/2011

Estimated time for hearing:

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is ☒ Admitted in part ☐ Denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are:
See attached response and defenses to claims, alleged per 7/11/17 Form 50 - SEE ATTACHMENT
2. It is ☒ Admitted in part ☐ Denied that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See #1
3. It is ☒ Admitted in part ☐ Denied that the relationship of employer and employee existed at the time in question. The reasons for denial are:
See #1
4. It is ☒ Admitted in part ☐ Denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See #1
5. It is ☒ Admitted in part ☐ Denied that notice of injury was given the employer. The reasons for denial are:
See #1
6. It is ☐ Admitted ☒ Denied that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are:
Claimant died June 4, 2016 - No medical possible
7. It is ☐ Admitted ☒ Denied that the employee is entitled to TTD for the period(s) of:
All indemnity available has been paid
8. It is ☐ Admitted ☒ Denied that the employee is permanently disabled. The reasons for denial are:
See #1 - Claimant is dead
9. It is ☐ Admitted ☒ Denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ See Form 20 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: The defendants are not aware of any affirmative defenses. However, if further discovery reveals the basis for any affirmative defenses, the defendants will amend this answer to assert those defenses. SEE ATTACHMENT.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Partner
Title

daddison@hedrickgardner.com
Email

August 10, 2017
Date

Refer to R.67-204 and R.67-210 and R.67-601 through R.67-615. Refer to R.67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

GUS A. KING V. PIERSIDE BOATWORKS

WCC# 1116698

**FORM 51 ATTACHMENT
RESPONSE AND DEFENSES TO CLAIMS
ALLEGED PER 7/11/17 FORM 50**

1. Defendants admit Claimant Gus A. King (hereinafter referred to as "King") had a compensable injury in 2011 as stated in Form 50. King subsequently received payment of all possible indemnity benefits allowed per the South Carolina Workers' Compensation Act, and was receiving ongoing medical benefits per the Act. The parties participated in a mediation to discuss settlement of the future medical benefits, said mediation occurring on June 2, 2016. The parties reached a tentative agreement on settling the Claimant King's rights to future medical care costs related to his compensable injuries. On June 9, 2016, prior to any settlement documents being completed, executed, and filed with the Commission, King died as a result of a car wreck. Defendants have asserted that all claims abated with King's death. The Claimant now seeks to enforce the mediation agreement. Defendant PMA asserts:
 - a. There is a jurisdictional issue, as the deceased Claimant has no standing – any claim for benefits paid after an unrelated death cannot be brought by deceased Claimant, or his estate, it can only be raised by a dependent as per the Act.
 - b. Any and all claims for future medical care, the only benefits to which King might have been entitled to at the time of the mediation, ceased and abated upon his death.
 - c. No formal Order or Consent Order was ever completed, signed by parties or filed at the Commission regarding the mediated agreement, and as such, no benefits are owed for any matter covered by the South Carolina Workers' Compensation Act subsequent to King's death. Any claim for future medical benefits ended with King's death.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739 www.wcc.sc.gov


PRE-HEARING BRIEF
WCC File No.: 1116698

Claimant's Name:	Gus A. King	Employer's Name:	Pierside Boatworks
Address:	[REDACTED]	Address:	c/o John Brophy
City:	John's Island State: SC Zip: [REDACTED]	City:	North Charleston State: SC ZIP: 29405
Home Phone:	[REDACTED] Work Phone:	Carrier:	PMA Insurance Group
Preparer's Name:	R. Daniel Addison	Preparer's Phone #:	803-727-1201

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$484.85 2. AWW: \$727.28 Date of Injury: 11/18/2011
3. Type of injury and body part(s) See prior Order, dated May 20, 2016

4. Facts in controversy: Whether deceased Claimant has standing to assert issues raised in Form 50? Whether a mediation agreement is enforceable where no Agreement and Final Release has been executed, filed, or approved by the Commission? Whether any person may claim right to receive settlement of un-accrued future medical benefits?

5. Legal issues involved S.C. Code §42-9-280, 42-9-390, S.C. Code Regs. §67-801; Estate of Covington v. AT&T Nassau Metals Corp.; Stone v. Roadway Express

Claimant was determined to be permanently and totally disabled and entitled to ongoing lifetime medical care. Claimant received a lump sum payment of all indemnity benefits and subsequently entered into negotiations to settle his future medical expenses. The parties mediated the future medical claim and entered into a mediation agreement. Subsequent to that mediation, but before an Agreement and Final release was entered into, Claimant died in a motor vehicle accident.

Since Claimant's death from a cause unrelated to this work injury, no party has been substituted as the real party in interest in place of the decedent Claimant. Defendants dispute the standing of Claimant's attorney to assert claims on behalf of the deceased Claimant and are not aware of any other party who would have standing to pursue this claim as all rights of the deceased Claimant abated at his death.

6. Unusual aspects: In the Form 50, decedent Claimant purports to name as witnesses counsel for Defendants as well as attorney Earl Ellis who acted as the mediator in this claim. Defendants object to any examination of its attorney as such would violate the attorney-client relationship and improperly seek to compel an attorney to give testimony in a case in which he is representing an involved party. Moreover, Defendants object to Earl Ellis testifying in this case as that would constitute a breach of confidentiality with respect to the mediation of this case and violate the express provisions of Rule 8, SCADR.

7. Witnesses (designate if expert)* None. Defendants reserve the right to call or cross-examine any witness named and called by the petitioning party.

8. Exhibits: None in addition to the exhibits submitted by the decedent Claimant in his APA. Defendant requests that all pleadings and evidence previously submitted in this case and made a part of the record be incorporated into and available as evidence in the hearing on this Form 50.

9. Medical evidence: (indicate report pursuant to R.67-612; deposition or appearance) Defendants will rely on medical documentation in the Commission record in this case.

10. Name, address, and specialty, if any, of the treating physician: N/A

11. Impairment rating(s); body part(s); physician and date of opinion: N/A

12. I am amending my Form 50/51 in the following manner N/A

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 57-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

I verify the contents of this Form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to James G. Christmas

Address Howell & Christmas, LLC, PO Box 1896, Mt. Pleasant, SC 29465 on the 6th day of October, 2017, by ☒ first class postage ☐ certified mail ☐ personal service

Signature: _____

Email: daddison@hedrickgardner.com

Date of Hearing October 19, 2017

Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 57-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116698

Gus A. King,	)	
	)	
Claimant,	)	
	)	
v.	)	
	)	MOTION TO INTERVENE, POSTPONE,
Pierside Boatworks, Employer, and PA	)	AND FOR AN ORDER REQUIRING
Manufacturers Association Insurance	)	MEDIATION
Company, Carrier,	)	
	)	
Defendants.	)	
	)	

TO: JUDICIAL DIRECTOR AMY BRACY, SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION, J. GARY CHRISTMAS, ATTORNEY FOR
CLAIMANT, AND R. DANIEL ADDISON, ATTORNEY FOR DEFENDANTS:

The Estate of Gus King moves that the Commission postpone the hearing scheduled for October 19, 2017 and order mediation due to the unusual issues in this case. Alternatively, the Estate requests leave to intervene in the hearing as the hearing's subject matter concerns the Estate's property; specifically, the Estate's contractual rights to a settlement agreement.

*

This case involves enforcing a settlement agreement. Claimant received an indemnity award and in June of 2016 participated in mediation to settle a claim for all future medical benefits. The mediation was successful. The parties signed an agreement requiring them to execute additional documents, as settlement agreements often require.

Claimant died after the mediation but before the execution of the subsequent settlement documents. On July 11, 2017, Claimant's attorney filed a Form 50 requesting a hearing and seeking enforcement of the settlement agreement.

Defendants filed a Form 51 taking the position Claimant lacks standing to seek any relief and that any claim for benefits must be raised by Claimant's dependents. A hearing is scheduled for October 19, 2017.

On October 3rd the Estate wrote the commission explaining it had an interest in the hearing and indicating it would be seeking a consent order postponing the hearing. Defendants subsequently responded that they would not consent to any such order. The Estate is accordingly filing this motion.

This matter involves enforcement of a settlement agreement, which is a contract. Any contractual rights Claimant possessed at the time of his death are property of the Estate by operation of the survival statute. S.C. Code Ann. § 15-5-90.

Nothing in the Workers' Compensation Act prevents a claimant's attorney from initiating a proceeding to enforce a settlement when a claimant dies—the Act is silent on the point—and it is sensible for the claimant's attorney to raise an issue like this in the event a claimant dies because the Commission will necessarily have to decide issues arising after death. These issues often include whether a dependency investigation is necessary and whether a claim has abated.

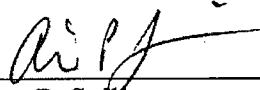
The Estate requests that mediation be ordered pursuant to Reg. 67-1801B, which grants a Commissioner the discretion to order mediation in any pending claim. The Estate believes mediation would be helpful because the issues in this case include an agreement reached at the conclusion of a prior mediation, whether a dependency investigation is required, and whether any claim abated. The prior mediation was conducted by attorney Earl Ellis.

The Estate believes the case's complex nature meets the "good cause" standard for postponement required by Reg. 67-613B.

In the event the Commission does not postpone the hearing and order mediation, the

Estate requests leave to intervene and to appear at the hearing for the purpose of presenting its position.

Respectfully Submitted,



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October 12, 2017
Columbia, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1116698

Gus A. King,

Claimant,

vs.

Pierside Boatworks,

Employer,

and

PMA Insurance Group,

Carrier.

Defendants.

Memorandum of Law

This matter is before the Commission upon the Form 50, *Employee's Request for Hearing*, filed on or about July 11, 2017 by counsel for the above-named claimant, Gus A. King ("King"). As set forth in the Form 50, King passed away on or about June 9, 2016 from injuries sustained in a motor vehicle accident that was unrelated to the above-captioned worker's compensation claim.¹ The primary purpose of the *Request for Hearing* is the request of King's counsel to have the Commission enforce a settlement that was negotiated at mediation by the parties prior to King's death. As discussed more fully below, the employer, Pierside Boatworks, and its carrier, PMA Insurance Group, (collectively, "Defendants") take the position that King's claim abated at his death and the mediation agreement is unenforceable as the settlement was never memorialized in an Agreement and Final Release approved by the South Carolina

¹ The July 11, 2017, Form 50 is filed in the name of King as the claimant in this case. To date, no motion or substitution has been filed to name a real party in interest in this case following the death of King.

Workers' Compensation Commission ("Commission") as required by the South Carolina Workers' Compensation Act ("Act").

Claim Background

The underlying facts of this case are largely not in dispute. King was involved in a catastrophic accident on November 18, 2011 while an employee of Employer. As the record reflects, King was working on a forklift when he bumped the engine, causing the engine to crank up in reverse, catching his left leg, followed by other severe injuries. A hearing was held on February 6, 2014 to determine several issues, including King's permanent disabilities, entitlement to future medical treatment, and a determination of the appropriate compensation range. In an order dated May 20, 2014, Commissioner Melody L. James, found that King sustained the following injuries in this accident:

cervical spine, lumbar spine, pelvis (including nerve injuries and crush injuries), pelvic bones, right shoulder (aggravated arthritis), right upper extremity, left upper extremity, bilateral lumbar radiculopathy, sacrum bursitis, ilium bones, pubic symphysis, umbilical hernia, right hip, right lower extremity, left hip, left lower extremity, left knee, left foot, left ankle, left heel, left heel spur, bottom of left foot (including plantar fascial fibromatosis), arthropathy, erectile dysfunction, chest (wheezing in chest), bacterial pneumonia, headaches, trachea, lungs, heart (including blood clots in his heart), left internal artery, right superior gluteal artery, respiratory failure, abdomen, large abdominal midland scar with deformation of the abdominal wall, severe constipation (due to narcotic bowel syndrome and post operative changes after severe pelvic injury requiring surgical treatment with colostomy and ileo conduit), gastrointestinal tract injury, gastrointestinal system (including the stomach, small intestines and large intestines), partial obstruction of bowels, scrotum, anus, rectum, perineum, urethra (including urethra injury with open wound into cavity), skin loss (including where colostomy bag placement is implanted), stomach, prostate, gallbladder, aggravated diabetes, anxiety, depression and insomnia

See May 20, 2014 Order, Finding of Fact No. 4. Commissioner James further determined that King was permanently and totally disabled as a result of the injuries sustained in this accident and entitled to lifetime future causally-related medical care and treatment. See May 20, 2014

Order, Finding of Fact No. 12. Commissioner James awarded King a lump sum award of his permanent and total disability benefits. No appeal was taken from this order and a Form 19, *Status Report and Compensation Receipt*, was filed on September 10, 2014 showing that Defendants had paid King all indemnity benefits to which he was entitled and the claim was closed. Defendants, thereafter, continued to provide King with the causally-related medical care to which he was entitled.

Subsequently, King moved to Dothan, Alabama and requested that medical care be provided to him in that area. Defendants retained the services of a third-party vendor to facilitate the identification of suitable medical providers and coordinate the provision of care. In the fall of 2015, Defendants were informed by the vendor of certain conduct by King that made further referrals to local providers untenable and could potentially subject the vendor and/or Defendants to civil liability. This conduct involved a reported incident in which King brought a hand gun to a doctor's office and implied to the staff that he would use the gun if he was not given additional pain medication. Defendants were informed that the doctor did provide a new prescription but thereafter refused to treat King any further. The vendor later rescinded its contract to provide services to King. Defendants, thereafter, were unable to locate or identify any suitable options for providing King with the care to which he was entitled. King filed a Motion for Rule to Show Cause with the Commission on or about December 23, 2015. In an order dated February 18, 2016, Commissioner Avery B. Wilkerson, Jr. ordered that King had the right to seek medical providers of his own choosing and Defendants would be responsible for paying the reasonable medical expenses incurred by King in accordance with the South Caroling fee schedule.

On June 2, 2016, the parties convened to conduct a mediation of the claim. As King has already received all indemnity benefits to which he had been entitled, the sole issue for

resolution at the mediation was negotiating a settlement and clincher for King's future medical treatment. At the conclusion of the mediation, the parties signed an Agreement Following Mediation Conference ("Mediation Agreement") memorializing the general terms of the negotiated settlement. See Claimant's APA, p. 31. As set forth in the Mediation Agreement, Defendants agreed to settle King's future medical for a lump sum payment of \$1,000,000. The Mediation Agreement specifically referenced that a subsequent Agreement and Release would be prepared by Defendants and executed by King and his attorney. Prior to entering into any formal Agreement and Release, King was killed in a motor vehicle accident on June 9, 2016. No Agreement and Final Release was ever executed.

King's counsel has made several attempts to file the Mediation Agreement with the Commission and seek to enforce it against Defendants. Defendants have opposed these efforts on the basis that the Mediation Agreement is insufficient to constitute an Agreement and Final Release as required by the Commission's regulations. Defendants further contend that, absent an enforceable Agreement and Final Release, King's claim, including his entitlement to future medical, abated at his death.

1. As a deceased claimant, King has no standing to raise the issues in the Form 50.

As an initial matter, the Form 50 that is the subject of this hearing purports to be filed by the claimant, King. To date, no pleadings or motions have been filed to substitute any real party in interest who has the legal authority to pursue this claim on behalf of King or any statutory beneficiaries. See e.g. Estate of Covington v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 S.E.2d 393 (1991) (holding claimant's mother, as Personal Representative and sole heir, could not receive benefits §42-9-280). King passed away on June 9, 2016, well over a year before the Form 50 was filed and no party with standing to assert any alleged rights under the Act has been

substituted in his place. Defendant's therefore, dispute the standing of the deceased claimant to assert any claims under the Act subsequent to his death.

2. The Commission does not have the authority to accept and approve the Mediation Agreement.

Pursuant to the regulations of the Commission, the Commission is only authorized to conclude a settlement where the parties have executed specific agreements. In this case, a general agreement following the mediation was agreed to but the Mediation Agreement does not contain the necessary information to satisfy the Commission's requirements for a Release and Final Agreement and, as such, cannot be filed by the Commission as such. South Carolina Electric and Gas Co. v. South Carolina Public Service Commission, 275 S.C. 487, 272 S.E.2d 793 (1980). ("as creatures of statute, regulatory bodies are possessed of only those powers which are specifically delineated."); Brown v. Bi-Lo, Inc., 354 S.C. 436, 441, 581 S.E.2d 836, 838 (2003) ("workers' compensation is a creature of statute. As such, we are bound to strictly construe the terms of the statute and to rely on the General Assembly to amend the statute where necessary.").

Voluntary settlements of workers' compensation claims are authorized under S.C. Code Ann. §42-9-390 which provides:

Nothing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this title. The employer must file a copy of the settlement agreement with the commission if each party is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with the commission and approved by one member of the commission.

According to the Commission's regulations, "[a]fter the claimant reaches maximum medical improvement the parties may agree to settle the claim by signing a Form 16 or Form 16A,

Agreement for Permanent Disability/Disfigurement Compensation, or by signing an Agreement and Final Release (clincher)." S.C. Code Regs. §67-801(A) (emphasis added). The Commission's regulations specify that only a clincher "relieves the employer and its representative from any further responsibility for payment of compensation or medical expenses." S.C. Code Regs. §67-801(E). Furthermore, "[a]n official copy of the settlement is approved and certified by the Commission as binding." S.C. Code Regs. §67-801(F). In order to constitute an Agreement and Final Release, the document must include the following:

- (1) The caption of the claim;
- (2) A statement of the facts at issue;
- (3) The date and nature of the alleged injury coinciding with the date and nature of each injury on the Form 12A, Form 50, or Form 52;
- (4) The amount of the settlement and terms of payment; and
- (5) The signature of the claimant, his or her attorney, if any, and the attorney for the employer's representative.

S.C. Code Regs. §67-803(A). The Regulations specifically prohibit the Commission from approving a document that does not meet these specific requirements. See S.C. Code Regs. §67-803(C) ("The Commission shall not approve an Agreement and Final Release that is not fairly made and in accordance with the Act.")

It has long been the law of the State of South Carolina that a workers compensation settlement is not binding unless and until a compliant settlement agreement has been executed, filed, and approved by the Commission. In Mackey v. Kerr-McGee Chemical, Co., the Court of Appeals stated:

[a]s the above quoted requirement of judicial approval of compensation settlements is necessary to protect the parties from unwise actions which may cause them serious detriment, and as that requirement appears to us to contemplate a proposed settlement to which all parties must agree at the time of the verifying and filing of the joint petition, we are satisfied that any party may unilaterally withdraw from the agreement prior to that time. Certainly, an employee or his dependents who had agreed to accept a settlement could

...withdraw from that agreement at any time prior to verification and filing, and we see no reason why the employer and his insurer cannot do the same thing.

Mackey v. Kerr-McGee Chemical, Co., 280 S.C. 265, 270, 312 S.E.2d 565, 568 (Ct. App. 1984) (quoting Pepitone v. State Farm Mut. Ins. Co., 346 So.2d 266 (La. Ct. App. 1977)); see also Haley v. Tire Kingdom, 2013 WL 8507874 (Ct. App. April 24, 2013) (“We found no evidence in the record that Haley executed the clincher agreement or that Tire Kingdom filed it with the commission. Without these formalities, the agreement cannot be enforced.”)

Without the strict compliance with the Act and the Commission’s regulations, the Commission simply does not have the authority to enforce a settlement that, while agreed to among the parties, has not yet been reduced to writing sufficient to constitute an Agreement and Final Release. On its face, the Mediation Agreement does not contain the requisite information regarding the statement of the facts at issue, the nature of the injuries, etc. Moreover, not only does the Mediation Agreement not comply with the specific requirements of the Commission’s Regulations, it has not yet been approved by the Commission and either party retains the right to withdraw its consent to the settlement prior to that approval.

While not strictly controlling, the law regarding the formalities of settlement in workers’ compensation cases is consistent with similar issues regarding civil court settlements. See e.g., Reed v. Associated Investments of Edisto Island, Inc., 339 S.C. 148, 154, 528 S.E.2d 94, 97 (Ct. App. 2000) (“Where the parties agree on the amount of the settlement, but not the terms of the settlement, it is not admitted so as to remove Rule 43(k)’s requirements Because the conditions upon which an agreed-upon sum of money will be paid are material terms of any settlement agreement, the absence of agreement on the terms of settlement is fatal.”); SCRPC, Rule 43(k) (“No agreement between counsel affecting the proceedings in an action shall be

binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record.”).

The cited South Carolina case law is likewise consistent with the general rule that workers’ compensation settlements must be followed to the letter and approved before they are binding. See 13 Larson, Workmen’s Compensation Law § 132.06 (“If the statute requires that a settlement have Commission approval, a settlement lacking such approval amounts to nothing more than a voluntary payment of compensation. . . . *Generally, the statutory requirements for obtaining approval must be followed to the letter.*”) (emphasis added). For example, in Barncord v. State, Dep’t of Transp., 4 Kan. App. 2d 368, 606 P.2d 501 (Kan Ct. App. 1980), aff’d sub nom. 228 Kan. 289, 613 P.2d 670 (1980), the Court of Appeals of Kansas held that settlement provisions were unenforceable because the agreement between the parties was not approved by the Director of the Workmen’s Compensation Fund or otherwise in a form recognized under Kansas law. Barncord, at 373, 606 P.2d at 505. In that case, the claimant died from a cause unrelated to his workplace accident on the morning the proposed settlement agreement, which included medical expenses, was to be submitted to the workers’ compensation director for approval. Id. at 369, 606 P.2d at 502-03. The decedent’s wife and children brought a claim to obtain the unpaid compensation. Id. at 368-69, 606 P.2d 502. The court determined that to enforce a settlement that had not yet been approved would undercut the purpose of the approval requirement altogether. Id. at 373, 606 P.2d 505. The court noted with approval the following:

Under the provisions of most of the Workmen’s Compensation Acts, agreements to compromise or settle claims, until approved by a court or some other competent authority, lack contractual force even though the parties thereto have done all that would be necessary to constitute a binding contract between them under the law of contracts. . . . Under the statutes of most states, compromise agreements must be approved by either a court or some administrative authority of competent jurisdiction before it is valid and enforceable. . . . The parties are not bound by an

agreement as to compensation unless the agreement is properly approved in accordance with the statutory provisions.

Id. at 373-74, 606 P.2d 505-066 (quoting 8 Schneider, Workmens Compensation Text §§ 1867, 1870 (1951)) (internal quotation marks omitted). The court held that without approval from the commission, the agreement was unenforceable, and the employer's liability to pay compensation abrogated; adopting the general rule that "no matter what the parties may agree to in a proceeding for compensation, and no matter how final and conclusive their agreement may be in terms, 'it will have no binding effect at all without the approval of the [workers' compensation commission].'" Id. This general rule has been followed by other jurisdictions that have addressed this issue. See, e.g., Tate v. Liberty Mut. Ins. Co., 185 So. 3d 468, 473 (Ala. Civ. App. 2015) (holding that a settlement agreement required approval to be binding); Odom v. Tosco Corp., 12 Ark. App. 196, 672 S.W.2d 915 (1984) (claimant's death prior to approval of joint petition rendered joint petition ineffective, as it did not comply with state statute requiring Commission's approval of final settlement agreements); Weitzel v. Travelers Ins. Companies, 417 Mass. 149, 153, 627 N.E.2d 926, 928 (1994) (language of the controlling statute clearly required agreements to be written and subject to approval from the Department of Industrial Accidents, before becoming enforceable); Sheets v. Hill Bros. Distribs., 379 S.W.2d 514, 518 (Mo. 1964) (holding invalid all agreements unapproved by the Division of Workmen's Compensation, whether favorable or unfavorable to the claimant); Baldwin v. Piedmont Woodyards, Inc., 58 N.C. App. 602, 603, 293 S.E.2d 814, 815 (1982) (holding that a settlement agreement not approved by Industrial Commission, as required by statute, was not binding); Facchine v. W.C.A.B. (Pure Carbon Co. & PMA Grp.), 883 A.2d 720, 723 (Pa. Commw. Ct. 2005) (approving Worker's Compensation Judge's decision to deny settlement agreement as it did not comply with statutory requirements); Lebid ex rel. Lebid v. W.C.A.B. (Cty. of Chester), 771 A.2d 79 (Pa. Commw. Ct.

2001) (settlement not in compliance with state's workers' compensation act deemed null and void).

For the foregoing reasons, the Commission lacks the authority to accept and approve the Mediation Agreement as requested because it simply does not satisfy the specific statutory requirements to constitute a clincher. On its face, the Mediation Agreement was never intended by the parties to represent a final binding agreement as evidenced by the express language that a formal agreement would later be prepared and executed. Absent a compliant clincher agreement that has been executed by the parties, filed, and approved by the Commission, South Carolina precedent is clear that either party could repudiate and rescind the agreement reached at mediation. Consequently, Defendants request that the Commission reject the request of King's attorney to file and approve the Mediation Agreement.

3. The claim of King and his entitlement to any future benefits abated at his death.

In the absence of a duly executed, filed, and approved Agreement and Final Release, the merits of any claim for additional benefits under the Act remains to be adjudicated. It is Defendants' position that the only benefit that King was entitled prior to his death was provision of his ongoing and future medical care, which abated at his death. As such, Defendants request an order from the Commission determining that Defendants are under no further obligation to provide benefits in this claim and the claim should be closed.

In Estate of Covington by Montgomery v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 S.E.2d 393 (1991), the South Carolina Supreme Court discussed what happens under the Act when a claimant dies under the three applicable statutory provisions: (1) S.C. Code Ann. §42-9-280 (death unrelated to work); (2) S.C. Code Ann. §42-9-290 (death related to work); and (3) S.C. Code Ann. §42-9-140 (decedent leaves no dependents). The case involved a claim by the

claimant's mother who was the claimant's personal representative and sole heir at law. The mother was substituted into the case as the claimant following her daughter's death from a cause unrelated to the work injury. The South Carolina Supreme Court identified the sole issue was whether death abates a workers' compensation claim where an employee dies without dependents from a non-work related injury. In deciding that issue, the Court held that the daughter's claim did abate at her death and her mother, who was not a dependent next of kin, was not entitled to receive any benefits under the Act. Covington, 304 S.C. at 439, 405 S.E.2d at 394 ("Here, Montgomery, the mother, is not dependent, nor is the injury work-related. This renders the claim noncompensable.") Moreover, the Court rejected the mother's claim that she had some right to recovery under S.C. Code Ann. §15-5-90 (survival statute). The Court held that the Act is a derogation of common law rights and supersedes the survivor statute such that they have no application with regard to any claims under the Act.

More recently, the South Carolina Supreme Court held that the widow of claimant found to be permanently and totally disabled under S.C. Code Ann. §42-9-10(A) was not entitled to receive the awarded compensation because she did not qualify under S.C. Code Ann. §42-9-280. See Stone v. Roadway Express, 367 S.C. 575, 627 S.E.2d 695 (2006). According the Court, "since a compensation award, unlike a tort award, is a personal one based on the employee's need for a substitute for lost wages and earning capacity, in the absence of a special statutory provision, heirs have no claim to unaccrued weekly payments." Stone, 367 S.C. at 585, 627 S.E.2d at 700 (citing Larson's Workers' Compensation Law (2000) §§ 89.01; 89.03). It is important to note that these cases all address issues of a putative beneficiary's right to receive compensation benefits. No case has held and no provision of the Act provides for a claim of a

beneficiary or dependent to receive the value of unaccrued future medical care following the death of a claimant, whether from causes related or unrelated to the workers' comp injury.

Larson's treatise demonstrates that South Carolina's rulings on this issues are consistent with the general rule for unaccrued workers' compensation benefits: "[I]f there are no dependents in the statutory sense, the [unaccrued] award abates." 7 Larson, Workmen's Compensation Law § 89.03; see also, e.g., Jones v. New Jersey Mfrs. Cas. Ins. Co., 77 N.J. Super. 147, 154, 185 A.2d 678, 682 (App. Div. 1962), aff'd, 39 N.J. 555, 189 A.2d 711 (1963) (holding that when claimant died of causes unrelated to the workplace accident, installment payments previously paid to sole dependent abates); OK Iron & Metal Co. v. Gardner, 872 P.2d 405, 407 (Okla. Civ. App. 1994) (concluding decedent's permanent partial disability award abates when decedent dies leaving only non-minor children); Black v. Billy Penn Corp., 72 Pa. Cmwlth. 628, 457 A.2d 192 (1983) (concluding that when decedent dies from an unrelated cause without statutory dependents, estate is only entitled to reasonable funeral expenses); Sherlin v. Liberty Mut. Ins. Co., 584 S.W.2d 455, 457-58 (Tenn. 1979) ("It appears to be reasonably clear that unaccrued disability benefits, upon the death of the employee, do not survive to his personal representative. . . . It would put an additional burden on the employer, not contemplated by the statutes, to require him to pay either wages or compensation to representatives of an employee who died from natural causes.").

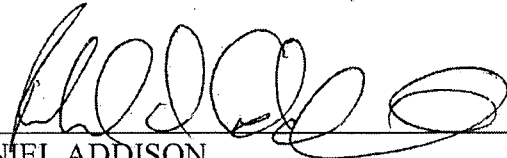
In this case, it is undisputed that King's death was unrelated to his work injury so it is clear that S.C. Code Ann. §42-9-290 has no application. Similarly, the provisions of S.C. Code Ann. §42-9-140 limits an employer's liability to payment of benefits under S.C. Code Ann. §42-9-290 to certain beneficiaries or survivors. S.C. Code Ann. §42-9-140 makes no provision for the payment of benefits when the death is unrelated to the work injury. The only provision of the

Act that addresses benefits paid when a death is unrelated to the work injury is S.C. Code Ann. §42-9-280. In that section, the “next of kin dependent upon him for support” are to receive the unpaid balance of compensation that the employee would have received had he lived. Thus, under S.C. Code Ann. §42-9-280, the only parties entitled to any benefits at all are “next of kin dependents” and they are only entitled to receive any balance of unpaid compensation.

As discussed above, King was no longer entitled to receive any compensation benefits as all indemnity to which he was entitled was paid out to him in 2014. At the time of his death, the only benefit that King was entitled to or receiving under the Act was ongoing medical care; an obligation that plainly does not survive his death from unrelated causes or entitle any heirs or dependents to any monetary payment.

CONCLUSION

Based on the foregoing authorities, the requested relief by King’s Counsel, or any other allegedly interested party, must fail. First, it is apparent from the pleadings before the Commission on this request that there is no party with standing to assert any rights to any alleged benefits arising out of King’s claim. Second, the request to enforce an agreement reached at mediation, without the requisite terms or statutorily required contents, is not permitted by the express terms of the South Carolina Workers’ Compensation Act and the regulations of this Commission. Finally, any remaining obligation of Defendants to provide future medical care to King prior to his death abated at his death and no party has any valid claim for any additional benefits arising out of the underlying work-related accident. Defendants respectfully request that the Commission deny the relief sought and dismiss this claim with prejudice.



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803-727-1201
Attorneys for Defendant(s)

December 13, 2017

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: **1116698**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Laura Becky King as
Beneficiary of the Estate of
Gus Allen King, and Robert
Horne as Personal
Representative of the Estate
of Gus Allen King
SSN: - -
Employer's Name: Pierside Boatworks
Address: 1300 Pierside Street
City: North Charleston State: SC Zip: 29405
Insurance Carrier: PMA Insurance Group
Address: [REDACTED]
City: Johns Island State: SC Zip: [REDACTED]
Home Phone: [REDACTED] Work Phone: () -
Preparer's Name: Blake A. Hewitt Law Firm: Bluestein Thompson Sullivan,
LLC Preparer's Phone #: (803) 779 - 7599

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 11/18/11

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to whole body (Part(s) of Body Injured) on 11/18/11 (Month/Day/Year) in Charleston county, state of South Carolina.
Body part(s) affected are: back, neck, right upper extremity, left upper extremity, pelvis, pelvic bones, ilium bones, pubic symphysis, umbilical hernia, right hip, right lower extremity, left hip, left lower extremity, lungs, heart, abdomen, gastrointestinal tract/system, skin loss, bladder, pancreas, stomach, spleen, liver, prostate, kidneys, gallbladder, psyche.

Briefly describe how the accident occurred. Claimant was working on a forklift when the engine engaged, causing it to run over him.

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 11/18/11 (Month/Day/Year) in the following manner:
Claimant notified his supervisor.

☐ 7. Due to Injury, the claimant is in need of (check one):

- ☐ (a) medical examination and treatment for: _____
☐ (b) additional medical examination and treatment for: _____

☐ 8. Due to Injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:

☒ 9. Due to the Injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☒ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. ☐ A determination of permanent disability is premature at this time.

☐ 10. Due to the Injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the Injury, the Claimant was paid weekly wages of \$Form 20 requested, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
Pierside Boatworks

11. Further grounds or unusual aspects of claim:

Claimant's case was mediated June 2, 2016, and the parties executed a settlement agreement. The mediator filed a Form 70 with the Commission on June 2, 2016. Claimant died June 9, 2016, due to injuries he sustained in an unrelated motor vehicle accident. Claimant's dependent (Mrs. King) and the Personal Representative of Claimant's Estate (Mr. Horne) assert the settlement agreement should be enforced by the Commission and the lump-sum payment requested by Claimant should be payable to Laura Becky King, who is Claimant's dependent and his beneficiary.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Claimant treated for his work related injuries at the following facilities: Roper St. Francis Hospital, 2095 Henry Tecklenburg Drive, Charleston, SC 29414; Carolinas Hospital System, 805 Pamplico Highway, Florence, SC 29505; HealthSouth Rehab Hospital, 900 E. Cheves Street, Florence, SC 29506; McLeod Regional Medical Center, 555 E. Cheves Street, Florence, SC 29506; Personal Care Physical Therapy, 3546 Maybank Highway, Johns Island, SC 29455; Dr. Neven Hadzizahic, Charleston GI, 1962 Charlie Hall Blvd., Charleston, SC 29414; Dr. Langdon Hartsock, MUSC Bone and Joint Center, 2125 Charlie Hall Blvd., Charleston, SC 29414; Stuart Leon, MUSC, 96 Jonathan Lucas Street, Charleston, SC 29425; MUSC, 169 Ashley Avenue, MSC 349, Charleston, SC 29425; Theodore Pappas, MD, St. Luke's Family Practice, 1435 Stuart Engals Blvd., Mt. Pleasant, SC 29464.

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: 1 hour

☒ 13b. I am requesting a hearing. A \$25 fee is required.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to please see attached certificate of service

address _____ on the 8 day of February 2018, by ☒ first class postage ☐ certified mail ☐ personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

<u>M. King et al</u>	<u>Attorney for Laura Becky King and Robert Horne</u>	<u>blake@bluesteinattorneys.com</u>	<u>2/8/18</u>
Preparer's Signature	Title	Email	Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50

Revised 7/13

50

Employee's Notice of Claim and/or
Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700 www.wcc.sc.gov

WCC File # 1116698
Carrier File #
Carrier Code #
Employer FEIN

Laura Becky King as Beneficiary
Of the Estate of Gus Allen King, and Robert
Horne as PR of the Estate of Gus Allen King

Claimant's Name SSN

Pierside Boatworks

Employer's Name

Address City State Zip

1300 Pierside Street North Charleston, SC 29405
Address City State Zip

Home Phone Work Phone

PMA Insurance Group
Insurance Carrier

Date of Injury: 11/18/2011

R. Daniel Addison Hedrick Gardner Kincheloe & Garofalo LLP 803-727-1201
Preparer's Name Phone #

Date of Injury or Illness: 11/18/2011

Estimated time for hearing: 1 hour

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.

The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is ☒ Admitted in part ☐ Denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are:
See Form 51 filed August 14, 2017. Defendants incorporate all responses and defenses set forth therein.
2. It is ☒ Admitted in part ☐ Denied that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See #1
3. It is ☒ Admitted in part ☐ Denied that the relationship of employer and employee existed at the time in question. The reasons for denial are:
See #1
4. It is ☒ Admitted in part ☐ Denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See #1
5. It is ☒ Admitted in part ☐ Denied that notice of injury was given the employer. The reasons for denial are:
See #1
6. It is ☐ Admitted ☒ Denied that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are:
Claimant died June 4, 2016 - No medical possible
7. It is ☐ Admitted ☒ Denied that the employee is entitled to TTD for the period(s) of:
All indemnity available has been paid
8. It is ☐ Admitted ☒ Denied that the employee is permanently disabled. The reasons for denial are:
See #1.
9. It is ☐ Admitted ☒ Denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ See Form 20 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: The PR for the Estate of Gus King has no standing to be a party to this case. Commissioner Barden issued an order on February 13, 2018 deciding this issue. Defendants further incorporate all defenses raised in prior Form 51, filed August 14, 2017. Defendants are not aware of any additional affirmative defenses. However, if further discovery reveals the basis for any affirmative defenses, the defendants will amend this answer to assert those defenses.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Partner
Title

daddison@hedrickgardner.com
Email

February 13, 2018
Date

Refer to R.67-204 and R.67-210 and R.67-601 through R.67.615. Refer to R.67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
P. O. Box 1715 * 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File #: 1116698
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Gus Allen King SSN: _____
Address: _____
City: Johns Island State: SC Zip: _____
Home Phone: (_____) _____ Work Phone: (_____) _____
Preparer's Name: Gary Christmas Law Firm: Howell & Christmas, LLC
Employer's Name: Pierside Boatworks
Address: 1300 Pierside Street
City: North Charleston State: SC Zip: 29405
Insurance Carrier: PMA Insurance Group
Preparer's Phone Number: (843) 849-2800

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$442.09, pursuant to Order and Award dated May 20, 2014.
2. Average Weekly Wage: \$663.10

Date of Injury: November 18, 2011

3. Type of injury and body part(s): As a result of his work accident, Mr. King underwent eight (8) surgeries within twelve days of his accident at work. As a result of his accident, Claimant sustained injuries to his whole body, including, but not limited to his cervical spine, right shoulder (aggravated arthritis), right upper extremity, left upper extremity, thoracic spine, lumbar spine (including muscle spasms and the injury to his spine at L5-S1, L4-L5 and L3-L4), bilateral lumbar radiculopathy, sacrum, bursitis, pelvis, pelvic bones, ilium bones, pubic symphysis, umbilical hernia, right hip, right lower extremity, left hip, left lower extremity, left knee, left foot, left ankle, left heel, left heel spur, bottom of left foot (including plantar fascial fibromatosis), arthropathy, bursitis, pelvis (including nerve injuries and crush injuries), pelvic bones, ilium bones, pubic symphysis, erectile dysfunction, umbilical hernia, chest (wheezing in chest), bacterial pneumonia, headaches, trachea (tracheostomy), lungs, heart (including blood clots in his heart), respiratory failure, left internal artery, right superior gluteal artery, abdomen, large abdominal midland scar with deformation of the abdominal wall, severe constipation (due to narcotic bowel syndrome and post operative changes after severe pelvic injury requiring surgical treatment with colonoscopy and ileo conduit), gastrointestinal tract injury, gastrointestinal system (including the stomach, small intestines and the large intestines), gastrointestinal tract injury with open wound into cavity, partial obstruction of bowels, scrotum, anus, rectum, perineum, urethra (including urethra injury with open wound into cavity), skin loss (where colonoscopy bag placement is implanted), bladder, pancreas, stomach, spleen, liver, prostate, gallbladder, kidneys, aggravated diabetes, aggravated arthritis, anxiety, depression and insomnia (Surgery 1 on November 18, 2011, for opened open pelvic fracture consisting of wound exploration, ligation of bleeding vessels and packing; Surgery 2 on November 21, 2011, for major severe open pelvic fracture status post exploratory laparotomy and packing of large perineal wound consisting of closed reduction and application of anterior pelvic external fixator; Surgery 3 on November 22, 2011, for pelvic fracture, perineal injury, severe bladder injury, rectal injury, history acute blood loss, massive bladder injury with ureterostomy for damage control procedure consisting of mobilization of the ureter from the left side to the right side and ileal loop conduit and cystectomy (removal of destroyed bladder; Surgery 4 on November 22, 2011, for open pelvis fracture consisting of removal of external fixator from anterior pelvis and open reduction internal fixation pubis symphysis; Surgery 5 on November 22, 2011, for open abdomen and rectal injury consisting of abdominal reexploration, removal of pelvic packs x5, washout, mobilization of splenic flexure, distal sigmoid colectomy and colostomy and primary fascial closure; Surgery 6 on November 29, 2011, for respiratory failure and penetrating pelvic trauma resulting in multiple pelvic fractures, bladder injury, and rectal injury requiring a proctosigmoid colectomy with end colostomy, cystectomy, and ileal conduit consisting of percutaneous tracheostomy tube placement; Surgery 7 on November 30, 2011, for perineal wound communicating to the pelvic cavity consisting of complex closure of pelvic floor and the perineal wound with placement of a wound VAC; and Surgery 8 on November 21, 2011, for poly trauma with severe pelvic fracture consisting of insertion of right femoral cordis catheter, pelvic venogram, inferior venacavagram and placement of inferior venacaval interruption device bard eclipse IVC filter).

4. Facts in controversy: Claimant was injured at work on November 18, 2011, when he was working on and underneath a large forklift when the engine engaged unexpectedly and ran over Claimant causing severe and catastrophic work-related injuries. Claimant's case was Mediated on June 2, 2016. At said Mediation on June 2, 2016, Claimant settled his workers' compensation case via Contract/Agreement Following Mediation Conference which was signed by all parties and the Mediator at Mediation (See attached "Exhibit 2"). The Form 70 - Mediator Report, was filed with the S.C. Workers' Compensation Commission on June 2, 2016 (See attached "Exhibit 3"). Claimant passed away on or about June 9, 2016, from injuries he sustained in a car accident which was unrelated to his workers' compensation case. Employer/Carrier mailed to Claimant his settlement check and Form 19 by letter dated June 9, 2016 (See attached "Exhibit 9"). Claimant requests that the Contract/Agreement Following Mediation (See attached "Exhibit 2") entered into by the Parties at Mediation on June 2, 2016 (1) be filed and made part of the record in this case; and (2) that the settlement agreed to at Mediation by Contract/Agreement Following Mediation, signed by all parties and the Mediator, be enforced by the South Carolina Workers' Compensation Commission. Claimant is seeking attorney's fees and case costs for litigating Claimant's claim. Claimant requests a lump sum payment of any award. To determine whether Claimant is entitled to any and all other benefits due under the Act. Claimant and Claimant's attorney request a lump sum payment of any award. To determine whether Claimant is entitled to any and all other benefits due under the Act.
5. Legal issues involved: See number 4 above.
6. Unusual aspects: On November 18, 2011, Claimant suffered catastrophic injuries at work. After reaching Maximum Medical Improvement he filed a Form 50 seeking an award of permanent and total disability pursuant to S.C. Code Ann. §42-9-10 and/or §42-9-30 (21) for fifty percent or more loss of use of the back and lifetime medical care and treatment. Claimant mediated his case on November 31, 2013, however, Claimant and employer/carrier were not able to settle his case at Mediation. As a result, a final merits hearing was held on February 6, 2014. By Order and Award dated May 20, 2014 (See attached "Exhibit 1"), Claimant's attorney obtained for Claimant, inter alia (1) permanent and total disability in the amount of \$148,165.70; and (2) lifetime future medical care and treatment pursuant to S.C. Code Ann. §42-9-10, and §42-15-60 including, but not limited to, office visits, medications including laxatives and Relistor; injections, periodic colon screening as opined by authorized treating physician, Dr. Neven Hadzijahic; medications including Oxycotin, Percocet, Lidoderm Patch, Lidoderm, Flexeril, Atenolol, Medrol, Fioricet, Amitriptyline, Diclofenac Sodium tablets, Oxycodone, Metformin HCl tablet, Juven, Multiviatmins, Seroquel, Eree Aid Estem Kit, Relistor, Miralax, Nebulizer, Duo Neb, Amitriptyline HCl, Xanax, Penicillin, Boost, Diclofenac Sodium, Cefdinir Capsule, Lactulose Solution, Opana, Senokot, Cyclobenzaprine HCl, follow up office visits, pain management, injections, trigger point injections, steroid injections, physical therapy, electric sleep number bed, walker with built in seat, lift chair, cane/walker, orthotics and/or braces for Claimant's bilateral lower extremities and repeat diagnostic imaging as opined by authorized treating physician, Dr. Theodore Pappas; office visits, repeat diagnostic imaging, defecography, colostomy bags and stoma paste as opined by authorized treating physician, Dr. Bruce A. Crookes; office visits, medications, pain management, injections, physical therapy, orthotics, braces and diagnostic imaging as opined by Dr. Langdon Hartsock; and also bags and supplies for his ileostomy as it is clear that Claimant still has two separate stomas (openings) in his body as a result of his work-related accident.

After his merits hearing in Claimant's case he relocated to Alabama and was obtaining authorized medical care and treatment there. However his authorized treating physicians refused to treat him. Furthermore, all alternate doctors that Claimant tried to contact in Alabama to provide him with his recommended treatment declined to treat

him for various reasons including, but not limited to, some providers not being willing to accept workers' compensation fee schedule rates. Given the issues and problems with Claimant obtaining authorized medical care and treatment in Alabama, the parties agreed to mediate this case, for a second time, in an attempt to settle Claimant's future medical care and treatment. On June 2, 2016, Claimant mediated his case in an effort to obtain monies for Claimant for his lifetime future medical care and treatment as outlined in the Order and Award dated May 20, 2014. Claimant obtained a settlement of One Million (\$1,000,000.00) dollars with employer/carrier by Contract/Agreement Following Mediation (See attached "Exhibit 2") which was signed by all parties and the Mediator at the Mediation on June 2, 2016. The Mediator then filed his Form 70 - Mediator Report that was sent to the Commission on June 2, 2016, and informed the Commission that Claimant's Case Was Settled at Mediation on June 2, 2016 (APA #3). Claimant died from injuries sustained in an unrelated car accident on or about June 9, 2016. Employer/Carrier mailed to Claimant his settlement check and Form 19 by letter dated June 9, 2016 (See attached "Exhibit 9"). Employer/carrier sent a letter attempting to revoke the settlement that was agreed to by all parties at Mediation on June 2, 2016 (See attached "Exhibit 8"). Claimant's attorney filed a Motion with the Commission to File Agreement Following Mediation Conference. The Single Commissioner hearing the Motion advised that given the issues in this case and that same go to "the merits" of this case that Claimant should file a Form 50 - Request For Hearing instead.

Accordingly, and per the Consent Order of Motion dated April 27, 2017, Claimant's attorney filed his Form 50 - Request for Hearing dated July 11, 2017, requesting that the Contract/Agreement Following Mediation entered into by the Parties at Mediation (1) be filed and made part of the record in this case; and (2) that the Contract/Agreement Following Mediation agreed to in the Mediation be enforced by the South Carolina Workers' Compensation Commission.

7. Witnesses (designate if expert): * Mediator, Earl Ellis; Daniel Addison, Esquire; Jeff Bonner, Adjuster; and Adam King (son of deceased Claimant). Claimant reserves the right to call any and all witnesses listed by defendant and any other witness who claims entitlement to any proceeds or benefits for Claimant's workers' compensation case.
8. Exhibits: Please see attached.
9. Medical evidence (indicated report pursuant to R.67-612; deposition or appearance): Please see attached.
10. Name, address, and specialty, if any, of the treating physician: Please see attached.
11. Impairment rating(s); body part(s); physician and date of opinion:
See Numbers 3, 4 and 6 above.
12. I am amending my Form 50/51 in the following manner: N/A.

- ☐ Mediation
- ☐a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 - ☐b. Mediation is required pursuant to Reg. 67-1802.
 - ☐c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 - ☐d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
- Questions regarding Mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to R. Daniel Addison, Hedrick Gardner Kincheloe & Garofalo, P.O. Box 11267, Columbia SC 29211; Allison P. Sullivan, Bluestein & Nichols LLC P O Box 7965, Columbia SC 29202; Blake A. Hewitt, Bluestein Nichols Thompson Delgado LLC, P O Box 7965 Columbia SC 29202; Paul J Doolittle, Attorney At Law, PO Box 2579, Mount Pleasant SC 29464 on the 15th day of February, by:

☐ first class postage ☐ certified mail ☐ personal service ☒ electronic service

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: _____

E-Mail: gc@howellandchristmas.com

Date of Hearing: March 29, 2018

Time needed for Hearing: 30 minutes

Questions about the use of this form should be directed to the Judicial Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. *Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form #58

Rev. Date 7/15

58

Pre-Hearing Brief

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116698

Gus A. King,)
)
 Claimant,)
)
 v.)
)
 Pierside Boatworks, Employer, and PA)
 Manufacturers Association Insurance)
 Company, Carrier,)
)
 Defendants.)
)

**BRIEF ON ENFORCEMENT OF
SETTLEMENT AGREEMENT**

The case presents the legal question whether a settlement agreement is enforceable if the Claimant dies before the settlement was filed with the Commission.

The facts are not contested. Claimant received an indemnity award and in June of 2016 participated in mediation to settle all remaining portions of the claim. The mediation was successful. The parties signed an agreement requiring the employer/carrier to pay Claimant \$1,000,000 and requiring Claimant and his lawyer to execute an "Agreement and Release."

Claimant died seven days after the mediation. The check had already been delivered to Claimant's counsel, and the mediator had filed the Form 70 indicating the mediation was successful. The Agreement and Release had not been executed or filed with the Commission.

This brief is filed on behalf of Claimant's dependent and the personal representative of Claimant's estate. They believe the mediation agreement is binding.

*

The Commission has jurisdiction of this issue because the question whether the mediation agreement is enforceable involves the Workers' Compensation Act and whether that Act adds to

the requirements of general contract law for a binding agreement. Section 42-3-180 of the South Carolina Code (2015) gives the Commission jurisdiction over all questions arising under the Act.

The only South Carolina case to consider this issue does not apply because the Workers' Compensation Act has changed since that case was decided. The Court of Appeals previously explained almost all jurisdictions have held settlements in workers' compensation cases are not binding until they have been approved by the Commission. *Mackey v. Kerr-McGee Chem. Co.*, 280 S.C. 265, 269, 312 S.E.2d 565, 567 (Ct. App. 1984). At the time that case was decided the Workers' Compensation Act required the Commission to approve all settlements. See S.C. Code Ann. § 42-9-390 (Supp. 2002). That statute was changed in 2007.

Now, the Act requires Commission approval only when the employee is not represented by counsel. S.C. Code Ann. § 42-9-390 (2015). All settlement agreements must still be filed with the Commission, but the Commission does not approve the settlement when both sides have lawyers. A regulation explains the agreement "shall be filed" by the Commission after it is received, indicating filing is a perfunctory act. Reg. 67-803(B)(2).

Mackey's general observation is partially right. Some cases in other jurisdictions have held workers' compensation settlements are not enforceable until they have been approved. But all of those cases are driven by the statutory language in those jurisdictions.

In Louisiana, for example, the relevant statute required a settlement agreement be presented for court approval via a petition verified by both parties. *Pepitone v. State Farm*, 346 So. 2d 266, 267 (La. Ct. App. 1977). The state of Arkansas had a similar requirement—a statute requiring a joint petition and explaining the Commission should conduct a hearing and take testimony. *Odom v. Tosco Corp.*, 672 S.W.2d 915, 917 (Ark. Ct. App. 1984).

The statute in Kansas required approval of every agreement or release from liability, *Barncord v. State*, 606 P.2d 501, 504 (Kan. Ct. App. 1980). The relevant statute in Alabama explained that no settlement agreement was valid “for any purpose” unless a judge determined it was in the best interest of the employee or the employee’s dependent. *Tate v. Liberty Mut. Ins. Co.*, 185 So. 3d 468, 471 (Ala. Civ. App. 2015).

Each of these jurisdictions had statutes adding the additional step of Commission approval before the parties could enforce what would otherwise be an enforceable agreement under basic contract law. The rationale for requiring Commission approval is that approval is necessary to protect the parties “from unwise actions.” *Pepitone*, 346 So. 2d at 268.

South Carolina law no longer contains an approval requirement. Thus, basic contract law governs; and basic contract law mandates enforcement of a mediation agreement. The mediation agreement has an offer, acceptance, and consideration. The parties entered a contract. Period.

Other states approach workers’ compensation settlements this same way. Indeed, other states have enforced settlement agreements in circumstances that are reasonably similar to the circumstances here. These jurisdictions include Arizona, Delaware, Maryland, Massachusetts, Mississippi, and New Mexico.

The Arizona Court of Appeals enforced a settlement agreement on behalf of a deceased Claimant in spite of the fact that Arizona law required commission approval, explaining the statute did not mean the settlement was invalid until it was approved and explaining the court was not aware of anything permitting parties to withdraw from a signed agreement. *Schuck & Sons Const. v. Indus. Comm’n of Ariz.*, 963 P.2d 310, 313 (Ariz. Ct. App. 1998). The Supreme Court of Delaware explained the controlling question was whether the parties had reached a

meeting of the minds as to all material terms of the settlement and that it did not serve the purposes of workers' compensation "to allow parties to avoid their commitments based on the fortuity" of the claimant's death. *Anchor Motor Freight v. Ciabattini*, 716 A.2d 154, 158-159 (Del. 1998).

The cases coming out this way are driven by the same general reasoning. As the Supreme Court of New Mexico explained, the Claimant's death does not provide grounds to rescind a settlement; the only grounds for backing out of a contract are mutual mistake, fraud, failure to express the agreement of the parties, or material breach. *Rojo v. Loeper Landscaping*, 759 P.2d 194, 197 (N.M. 1988). Mississippi and Maryland agree. *Taylor v. Reliance Well Serv.*, 220 So. 3d 260, 265 (Miss. Ct. App. 2017) (similar reasoning); *Ferreira v. Arrow Mut. Liab. Ins. Co.*, 447 N.E.2d 1258, 1259 (Mass. App. Ct. 1983) (same); *B. Frank Joy Co. v. Isaac*, 636 A.2d 1016, 1023 (Md. 1994) (settlement agreement was bilateral contract and was enforceable between parties absent fraud, undue influence, or mistake).

These jurisdictions have the better of the argument. A Claimant's death is not a fraud on the other party, a mutual mistake, or a material breach. This is an attempt to back out of a bargain that, in hindsight, was not as beneficial to one party as that party originally anticipated. Signed settlement agreements are contracts. The parties may not back out of them when subsequent events reveal the contract to be a worse deal than the parties anticipated when they signed the agreement. If parties *can* back out of signed agreements like the agreement here, the signed agreement is not worth anything.

Note that some of the cases where settlements were enforced are factually distinguishable because they involved signed agreements that were submitted to the relevant Commission (but

not approved) before the Claimant died. That distinction does not matter here because South Carolina law does not require Commission approval when both parties were represented by counsel. The critical point is that the mediation agreement was a contract between the Claimant, the Employer, and the Carrier. This contract must be enforceable because the guaranty of enforcement is precisely why parties sign written settlement agreements at the conclusion of a successful mediation.

Note also how ruling this settlement unenforceable will create a situation that disproportionally and unnecessarily favors employers and carriers. As the Fifth Circuit explained, a change of condition that benefits the carrier will tend to show up sooner. *Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773, 781-782 (5th Cir. 1988). The Claimant will have a better recovery, the injury will have less economic impact than predicted, the Claimant will die sooner than predicted—the things tending to show the settlement was more generous than necessary will tend to show up before the lump sum settlement is exhausted. *Id.* But the bad bargain for the Claimant tends to show up at the end. The injury becomes more disabling with time or the Claimant tends to live past his life expectancy. *Id.* Yet, there is no way to allow a Claimant to rescind a lump-sum settlement if it turns out to be a bad bargain. *Id.*

The Fifth Circuit's reasoning is compelling. It explains why jurisdictions require Commission approval. They do so to protect Claimants. Claimants "are typically unskilled[,] untutored in actuarial principles [and frequently awed by large amounts of cash.]" *Id.* Insurers, however, have "claims representatives and attorneys [who] are experienced negotiators with actuarial principles firmly in mind." *Id.* There is no public policy need to protect an insurance company from a bargain that turns out not to be as good as originally thought. There is also no

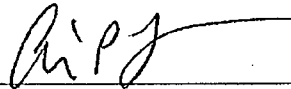
reasoned basis for violating basic contract law to create this unjustified protection.

The Commission should enforce the settlement agreement from mediation and require the Employer and Carrier to prepare the Agreement and Release so it may be filed per the Act.

**

For the foregoing reasons the Commission should hold the mediation agreement is binding and may not be rescinded on account of Claimant's death.

Respectfully Submitted,



Blake A. Hewitt
Allison P. Sullivan
BLUESTEIN THOMPSON SULLIVAN
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Columbia, SC 29202
(803) 779-7599
blake@bluesteinattorneys.com
allison@bluesteinattorneys.com

March 14, 2018
Columbia, South Carolina

Attorneys for Claimant's Beneficiary and for
the Personal Representative of Claimant's Estate

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1116698

Gus A. King,

Claimant,

vs.

Pierside Boatworks,

Employer,

and

PMA Insurance Group,

Carrier,

Defendants.

Reply Brief

The employer, Pierside Boatworks, and its carrier, PMA Insurance Group, (collectively, "Defendants"), hereby respectfully submit this brief in reply to the Brief on Enforcement of Settlement Agreement ("Brief") filed by Laura King, spouse of the deceased claimant ("Claimant") in this matter.

In her Brief, Ms. King, through her attorneys, argues the mediation agreement at issue in this case is binding and enforceable despite the fact that it does not comply with the statutory and regulatory requirements of the South Carolina Workers Compensation Commission ("Commission") for a valid and enforceable settlement agreement. Ms. King correctly notes that the South Carolina Workers' Compensation Act ("Act") no longer expressly requires the Commission to "approve" settlement agreements following the 2007 amendments to the Act. Compare S.C. Code § 42-9-390 (Supp. 2006) ("A copy of the settlement agreement must be filed by the employer with and approved by only one member of the commission . . ."), with S.C.

Code § 42-9-390 (2015) (“The employer must file a copy of the settlement agreement with the commission . . .”). In addition to glossing over the statutory requirement for the employer to “file” the settlement agreement, Ms. King also fails to address the requirements of the Commission’s regulations on settlements. See S.C. Code Regs. § 67-801(A) (“[T]he parties may agree to settle the claim by signing . . . an Agreement and Final Release (clincher).”); see also, S.C. Code Regs. § 67-803 (specifying the requirements for an agreement to constitute an Agreement and Final Release). In this case, the mediation agreement at issue was neither “filed by the employer,” nor does it satisfy the requirements of the regulations regarding form and content. Ms. King, in her Brief, dismisses the statutory requirement of filing as “perfunctory”, without citation to any authority that would authorize the Commission to ignore the plain language of the statute or its regulations. As such, the Commission is without authority to enforce the mediation agreement.

In addition to failing to show that South Carolina’s statutory and regulatory requirements support enforcement of the mediation agreement in this case, Ms. King’s cited authorities are factually distinguishable from this case and do not support its enforceability. In fact, Ms. King acknowledges that “some of these cases where settlements were enforced are factually distinguishable because they involved signed agreements that were submitted to the relevant Commission (but not approved) before the Claimant died.” See Brief, pp. 4-5. Ms. King contends that this distinction “does not matter” because South Carolina law no longer requires Commission approval of settlement agreements. What this argument fails to address is the fact that the “filing” is an explicit statutory requirement under South Carolina law and, in fact, was determinative in most of the cases cited by Ms. King.

In B. Frank Joy Co. v. Isaac, 636 A.2d 1016 (Md. 1993), the employee and employer entered into a settlement agreement and submitted that agreement to the commission for approval. It appears from the facts of the case that this agreement met with all formal requirements for an agreement under Maryland law and was submitted to the commission for approval (as required by the statute). The claimant died eight days before the hearing. At the hearing, the employer sought to rescind the agreement. The commission nevertheless approved the agreement. In affirming this approval, the court noted that the Maryland statute required approval of an agreement in order to be enforceable but stated:

That does not mean, however, that the parties have total freedom to renege a valid bilateral agreement they have formally submitted for Commission approval in compliance with the Act. When they present a duly executed settlement agreement to the Commission, the parties thereby relinquish control of the matter to the supervisory powers, authority, and discretion bestowed upon the Commission. Then a party, acting unilaterally, does not have unfettered license to withdraw what that party has submitted in good faith.

Isaac, 636 A.2d at 1025 (emphasis added).

Similarly, in Ferreira v. Arrow Mut. Liability Ins. Co., 447 N.E.2d 1258 (Mass. App. Ct. 1983), the court held:

Barring mutual mistake, fraud or other principles of equity, we believe that when an instrument with the finality of an agreement for redeeming liability has been executed and filed with the Division, presented to the single member for approval at a hearing conference, and recommended for approval by that member, the insurer may no longer unilaterally rescind the agreement.

Ferreira, 447 N.E.2d at 1259-60 (emphasis added); see also Taylor v. Reliance Well Serv. Inc., 220 So.3d 260 (Miss. Ct. App. 2017) (“Reliance Well has not shown how Taylor’s death, after the settlement was already signed by the parties and submitted to the Commission, has any bearing on this issue.”); Rojo v. Loeper Landscaping, Inc., 759 P.2d 194 (N.M. 1988) (“[a]ll of

the elements mandating approval and precluding disapproval were found to exist when the agreement was presented to the hearing officer . . .”).

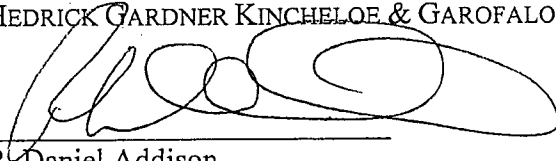
In short, none of the authorities relied upon by Ms. King compel any different result than the one reached by the South Carolina Court of Appeals in Mackey v. Kerr-McGee Chemical Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). As stated in that case, “Certainly, an employee or his dependents who had agreed to accept a settlement could withdraw from that agreement at any time prior to verification and filing, and we see no reason why the employer and his insurer cannot do the same thing.” Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (quoting with approval, Pepitone v. State Farm Mut. Ins. Co., 346 So. 2d 266 (La. Ct. App. 1977)) (emphasis added). While this case was admittedly decided prior to the 2007 amendments removing the requirement of approval, the reasoning remains the same: until a settlement agreement is entered into and filed with the Commission, either party retains the right to withdraw from the agreement.¹

CONCLUSION

Based on the foregoing, and Defendants’ previously submitted Memorandum of Law, Defendants respectfully request the Commission deny the relief sought and dismiss this claim with prejudice.

¹ In her Brief, Ms. King argues, without authority, that “basic contract law” governs the enforcement issue in this case. This argument was expressly rejected in Mackey. See Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (“Contract law principles are inapplicable here because § 42-1-310 provides that employee claims for compensation are governed exclusively by the worker’s compensation act.”).

HEDRICK GARDNER KINCHELOE & GAROFALO LLP

A handwritten signature in black ink, appearing to read 'R. Daniel Addison', is written over a horizontal line.

R. Daniel Addison
1230 Main St. Suite 325
Columbia, SC 29201
Attorneys for Defendants

March 23, 2018

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: **1116698**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Laura King, spouse of Deceased Claimant
Gus Allen King, and Robert Horne, as Personal Representative of the Estate of Gus Allen King
SSN: [REDACTED]
Address: [REDACTED]
City: Johns Island State: SC Zip: [REDACTED]
Home Phone: [REDACTED] Work Phone: () -
Preparer's Name: Blake A. Hewitt Law Firm: Bluestein Thompson Sullivan, LLC Preparer's Phone #: (803) 779-7599
Employer's Name: Pierside Boatworks
Address: 1300 Pierside Street
City: North Charleston State: SC Zip: 29405
Insurance Carrier: PA Manufacturers Assn. Ins. Co.

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 10/18/2011

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see attached.

SCWCC
MAY 16 2018
JUDICIAL

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to please see attached certificate of service address _____ on the 14 day of May 2018, by X first class postage _____ certified mail _____ personal service.

Preparer's Signature: [Signature] Attorney for Laura King and Robert Horne Title: _____ Email: blake@bluesteinattorneys.com Date: 5/14/18

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No.: 1116698

Gus A. King,)
)
Claimant,)
)
v.)
)
Pierside Boatworks,)
)
Employer,)
)
and)
)
PA Manufacturers Association)
Insurance Co.,)
)
Carrier,)
Defendants.)
_____)

ATTACHMENT TO FORM 30

Laura King, spouse of the deceased Claimant Gus Allen King, and Robert Horne, as personal representative of Mr. King's estate, respectfully poses the following grounds for appeal:

1. Did the Single Commissioner err in finding as a fact and concluding as a matter of law that the "agreement following mediation conference" (the mediation agreement) was not binding on the parties and not enforceable? *See* Single Commissioner's Order generally.
2. Did the Single Commissioner err in failing to order the defendants to prepare and execute an "agreement and release" (clincher) for filing with the Commission as required by the mediation agreement? *See* Single Commissioner's Order generally.
3. Did the Single Commissioner err in denying the Estate's motions to intervene and participate? *See* Single Commissioner's Order p.2 n.1 (noting the orders denying the Estate's motions to intervene).
4. Did the Single Commissioner err in finding as a fact that parties are always free to "back out of" a clincher until it is signed? *See* Single Commissioner's Order, Finding of Fact #7.
5. Did the Single Commissioner err in finding as a fact that the act of filing a settlement agreement with the Commission is not a perfunctory act under the revised statute and regulations? *See* Single Commissioner's Order, Finding of Fact #8.

6. Did the Single Commissioner err in finding as a fact that nothing in the mediation regulations indicate a mediation agreement is binding and in implying that enforcing the mediation agreement would be "creat[ing] new law where such does not exist?" *See* Single Commissioner's Order, Finding of Fact #9.
7. Did the Single Commissioner err in finding as a fact that the Commission is without authority to enforce the mediation agreement? *See* Single Commissioner's Order, Finding of Fact #11.
8. Did the Single Commissioner err in finding as a fact that the authorities cited in favor of enforcing the mediation agreement were meaningfully distinguishable? *See* Single Commissioner's Order, Finding of Facts #13 through 15.
9. Did the Single Commissioner err in finding as a fact that the decision of the Court of Appeals in *Mackey v. Kerr-McGee Chemical Co.* remains binding despite the change in the controlling statute and that parties have the ability to withdraw from a settlement until it is filed with the Commission. *See* Single Commissioner's Order, Finding of Fact #16.
10. Did the Single Commissioner err in finding as a fact that principles of contract law are inapplicable to Workers' Compensation generally and to this circumstance specifically? *See* Single Commissioner's Order, Finding of Fact #18.
11. Did the Single Commissioner err in finding as a fact that the Commission had no authority to enforce the mediation agreement and was "specifically prohibited" from enforcing the agreement? *See* Single Commissioner's Order, Finding of Fact #19.
12. Did the Single Commissioner err in finding the Commission was without the authority to enforce the mediation agreement and that the parties retained the right to rescind the agreement prior to signing and filing a clincher? *See* Single Commissioner's Order, Finding of Fact #20.
13. Did the Single Commissioner err in finding as a fact that at the time of the deceased Claimant's death he had received everything to which he was entitled, the error being the deceased Claimant was entitled before his death to enforce the settlement agreement and his rights to enforce that agreement have passed to Laura King as the beneficiary of the deceased Claimant's Estate and as the deceased Claimant's dependent? *See* Single Commissioner's Order, Finding of Fact #21.
14. Did the Single Commissioner err in conclusion of law #10 by failing to order the defendants to prepare and execute a clincher for filing with the Commission as required by the mediation agreement and by Reg. 67-803?
15. Did the Single Commissioner err conclusion of law #11 by holding the mediation agreement was not binding on the parties and not enforceable?

SCWCC
MAY 16 2018
JUDICIAL

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1116698
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Gus A. King SSN: [REDACTED] Employer's Name: Pierside Boatworks
Address: Deceased Address: 1300 Pierside Street
City: _____ State: _____ Zip: _____ City: Charleston State: S.C. Zip: 29405
Home Phone: _____ Work Phone: _____ Insurance Carrier: PA Manufacturers Assn. Ins. Co.
Preparer's Name: Gary Christmas Law Firm: Howell and Christmas, LLC Preparer's Phone #: 843-849-2800

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 11/18/2011 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see attached.

(Check one) Oral argument ☐ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See attached.

address _____ on the 14th day of May, 2018
by first class postage certified mail personal service.

Preparer's Signature

Attorney
Title

gc@hcinjury.com
Email

5/14/2018
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

Attachment to Form 30

RE: Gus A. King vs. Pierside Boatworks

WCC#: 1116698

Date of Accident: November 18, 2011

1. Did the Single Commissioner err in finding as a fact and concluding as a matter of law that the "agreement following mediation conference" (the mediation agreement) was not binding on the parties and not enforceable? *See* Single Commissioner's Order generally.
2. Did the Single Commissioner err in failing to order the defendants to prepare and execute an "agreement and release" (clincher) for filing with the Commission as required by the mediation agreement? *See* Single Commissioner's Order generally.
3. Did the Single Commissioner err in denying the Estate's motions to intervene and participate? *See* Single Commissioner's Order p.2 n.1 (noting the orders denying the Estate's motions to intervene).
4. Did the Single Commissioner err in finding as a fact that parties are always free to "back out of" a clincher until it is signed? *See* Single Commissioner's Order, Finding of Fact #7.
5. Did the Single Commissioner err in finding as a fact that the act of filing a settlement agreement with the Commission is not a perfunctory act under the revised statute and regulations? *See* Single Commissioner's Order, Finding of Fact #8.
6. Did the Single Commissioner err in finding as a fact that nothing in the mediation regulations indicate a mediation agreement is binding and in implying that enforcing the mediation agreement would be "creat[ing] new law where such does not exist?" *See* Single Commissioner's Order, Finding of Fact #9.
7. Did the Single Commissioner err in finding as a fact that the Commission is without authority to enforce the mediation agreement? *See* Single Commissioner's Order, Finding of Fact #11.
8. Did the Single Commissioner err in finding as a fact that the authorities cited in favor of enforcing the mediation agreement were meaningfully distinguishable? *See* Single Commissioner's Order, Finding of Facts #13 through 15.
9. Did the Single Commissioner err in finding as a fact that the decision of the Court of Appeals in *Mackey v. Kerr-McGee Chemical Co.* remains binding despite the change in the controlling statute and that parties have the ability to withdraw from a settlement until it is filed with the Commission. *See* Single Commissioner's Order, Finding of Fact #16.
10. Did the Single Commissioner err in finding as a fact that principles of contract law are inapplicable to Workers' Compensation generally and to this circumstance specifically? *See* Single Commissioner's Order, Finding of Fact #18.

11. Did the Single Commissioner err in finding as a fact that the Commission had no authority to enforce the mediation agreement and was "specifically prohibited" from enforcing the agreement? *See* Single Commissioner's Order, Finding of Fact #19.
12. Did the Single Commissioner err in finding the Commission was without the authority to enforce the mediation agreement and that the parties retained the right to rescind the agreement prior to signing and filing a clincher? *See* Single Commissioner's Order, Finding of Fact #20.
13. Did the Single Commissioner err in finding as a fact that at the time of the deceased Claimant's death he had received everything to which he was entitled, the error being the deceased Claimant was entitled before his death to enforce the settlement agreement and his rights to enforce that agreement have passed to Laura King as the beneficiary of the deceased Claimant's Estate and as the deceased Claimant's dependent? *See* Single Commissioner's Order, Finding of Fact #21.
14. Did the Single Commissioner err in conclusion of law #10 by failing to order the defendants to prepare and execute a clincher for filing with the Commission as required by the mediation agreement and by Reg. 67-803?
15. Did the Single Commissioner err in conclusion of law #11 by holding the mediation agreement was not binding on the parties and not enforceable?

Gus A. King, Claimant,
Appellant,
v.
Pierside Boatworks, Employer, and PA
Manufacturers Association Insurance
Company, Carrier,
Respondents.

This brief is filed on behalf of the deceased Claimant. It is also filed on behalf of Claimant's widow (Laura King), and it is conditionally filed on behalf of Bob Horne, the Personal Representative of the deceased Claimant's Estate. The Estate has a pending motion to intervene in this case and has made two prior motions to intervene. The Estate joins this brief to preserve its argument respecting the merits.

This case presents the question whether a settlement agreement from a successful mediation is enforceable even though formal settlement documents have not been prepared or filed with the Commission. The facts are not contested. Claimant received an indemnity award and in June of 2016 participated in mediation to settle all remaining parts of the claim.

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Claimant unfortunately died seven days later in an unrelated motor vehicle accident. The settlement check had already been delivered to Claimant's counsel. The mediator had also already filed a Form 70 reporting that the mediation was successful with the Commission. The Agreement and Release had not been executed or filed with the Commission.

The first requests for a hearing to enforce the settlement were filed by attorney Gary Christmas on the Claimant's behalf. Subsequent hearing requests were filed by Claimant's widow and by the personal representative of Claimant's Estate.

These individuals are aligned in interest. All of them take the position that the mediation agreement is enforceable and that the Commission should compel the defendants to prepare and execute the agreement and release (the "clincher") as required by the terms of the mediation agreement so the settlement can be accomplished.

The single commissioner (Commissioner Barden) conducted a hearing March 29, 2018 in Columbia. Following that hearing, she issued an order finding that the mediation agreement was not enforceable and that parties are free to "back out" of a settlement until a clincher is signed.

I. The Commission should hold that written agreements to settle are binding even if those agreements provide that additional documents must be prepared in order to accomplish the settlement.

The Commission should hold that written agreements to settle are binding even if those agreements contemplate additional documents will be prepared to accomplish the settlement. Written agreements matter. Parties expect, and are entitled to expect, that basic contract principles will apply and that written agreements will be enforced. Litigants are not free to change their positions at will and to make unilateral decisions to walk away from signed agreements. The Commission should enforce this settlement.

First, the Commission has jurisdiction of this issue because the question whether the mediation agreement is enforceable involves the Workers' Compensation Act. Section 42-3-180 of the South Carolina Code (2015) gives the Commission jurisdiction over all questions arising under the Act. Here, the question under the Act is whether the Act adds anything to the general requirements in contract law (offer, acceptance, and consideration) for a binding agreement. The answer to that question is "no."

South Carolina has precisely one case addressing this issue, and it is not on point because the Workers' Compensation Act has changed since that case was decided. The Court of Appeals previously explained almost all jurisdictions have held settlements in workers' compensation cases are not binding until they have been approved by the Commission. *Mackey v. Kerr-McGee Chem. Co.*, 280 S.C. 265, 269, 312 S.E.2d 565, 567 (Ct. App. 1984). At the time that case was decided the Workers' Compensation Act required a settlement agreement to be filed by the employer "and approved by the Commission." See S.C. Code Ann. § 42-9-390 (Supp. 2002).

That statute was changed in 2007. Now, the Act requires Commission approval only when the employee is not represented by counsel. S.C. Code Ann. § 42-9-390 (2015). Settlement agreements must still be filed, but the Commission does not approve the settlement when both sides have lawyers. A regulation explains the agreement "shall be filed" by the Commission after it is received. Reg. 67-803(B)(2).

Other courts and commissions have faced this question. Some jurisdictions have held workers' compensation settlements are not enforceable until they have been approved by a governing body like the Commission. Other jurisdictions have reached the opposite conclusion.

The results of these cases are driven by the statutory language of the jurisdiction in question. In Louisiana, for example, the relevant statute required a settlement agreement be presented *for court approval* via a petition verified by both parties. *Pepitone v. State Farm*, 346 So. 2d 266, 267 (La. Ct. App. 1977). The state of Arkansas had a similar requirement—a statute requiring a joint petition and explaining the Commission *should conduct a hearing and take testimony*. *Odom v. Tosco Corp.*, 672 S.W.2d 915, 917 (Ark. Ct. App. 1984).

The statute in Kansas required *approval* of every agreement or release from liability. *Barncord v. State*, 606 P.2d 501, 504 (Kan. Ct. App. 1980). The relevant statute in Alabama explained that no settlement agreement was valid “*for any purpose*” unless a judge determined it was in the best interest of the employee or the employee’s dependent. *Tate v. Liberty Mut. Ins. Co.*, 185 So. 3d 468, 471 (Ala. Civ. App. 2015).

Note that each of these jurisdictions had statutes adding the additional step of Commission approval before the parties could enforce what would otherwise be an enforceable agreement under basic contract law. The rationale for requiring Commission approval is that approval is necessary to protect the parties “from unwise actions.” *Pepitone*, 346 So. 2d at 268.

Other States have reached the opposite result and enforced settlement agreements in circumstances that are reasonably similar to the circumstances here. Those States include Arizona, Delaware, Maryland, Massachusetts, Mississippi, and New Mexico.

The Arizona Court of Appeals enforced a settlement agreement on behalf of a deceased Claimant in spite of the fact that Arizona law required commission approval, explaining the statute did not mean the settlement was invalid until it was approved and explaining the court was not aware of anything permitting parties to withdraw from a signed agreement. *Schuck &*

Sons Const. v. Indus. Comm'n of Ariz., 963 P.2d 310, 313 (Ariz. Ct. App. 1998). The Supreme Court of Delaware explained the controlling question was whether the parties had reached a meeting of the minds as to all material terms of the settlement and that it did not serve the purposes of workers' compensation "to allow parties to avoid their commitments based on the fortuity" of the claimant's death. *Anchor Motor Freight v. Ciabattoni*, 716 A.2d 154, 158-159 (Del. 1998).

The cases coming out this way are driven by the same general reasoning. As the Supreme Court of New Mexico explained, the Claimant's death does not provide grounds to rescind a settlement; the only grounds for backing out of a contract are mutual mistake, fraud, failure to express the agreement of the parties, or material breach. *Rojo v. Loeper Landscaping*, 759 P.2d 194, 197 (N.M. 1988). Mississippi and Maryland agree. *Taylor v. Reliance Well Serv.*, 220 So. 3d 260, 265 (Miss. Ct. App. 2017) (similar reasoning); *Ferreira v. Arrow Mut. Liab. Ins. Co.*, 447 N.E.2d 1258, 1259 (Mass. App. Ct. 1983) (same); *B. Frank Joy Co. v. Isaac*, 636 A.2d 1016, 1023 (Md. 1994) (settlement agreement was bilateral contract and was enforceable between parties absent fraud, undue influence, or mistake).

That general reasoning is correct. A Claimant's death is not a fraud on the other party, a mutual mistake, or a material breach. This is an attempt to back out of a bargain that, in hindsight, was not as beneficial to one party as that party originally anticipated. Signed settlement agreements are contracts. The parties may not back out of them when subsequent events reveal the contract to be a worse deal than the parties anticipated when they signed the agreement. If parties *can* back out of signed agreements like the agreement here, such agreements are not really worth anything and the value of the mediation process is diminished.

Note that some of the cases where settlements were enforced are factually distinguishable because they involved signed agreements that were submitted (but not approved) before the Claimant died. That distinction does not matter here. Again, South Carolina law does not require Commission approval when both parties are represented by counsel. Basic contract law governs—indeed, it is difficult to imagine a sensible reason why basic contract law would not govern. Absent a statute or regulation that supplants basic contract law, basic contract law mandates enforcement of a valid contract. The mediation agreement has an offer, acceptance, and consideration. The parties entered a contract. Period.

The point about the mediation agreement being a contract is critical. It was a contract between the Claimant, the Employer, and the Carrier. Everyone benefits from a system where contracts like this are enforceable. The guarantee of enforcement is the very reason why parties sign written settlement agreements at the conclusion of a successful mediation.

It is also important to note that ruling this settlement unenforceable will create a situation that disproportionately and unnecessarily favors employers and carriers. As the Fifth Circuit explained, a change of condition that benefits the carrier will tend to show up sooner. *Oceanic Butler, Inc. v. Nordahl*, 842 F.2d 773, 781-782 (5th Cir. 1988). The claimant will have a better recovery, the injury will have less economic impact than predicted, or the claimant will die sooner than predicted. The things that tend to show the settlement was more generous to the claimant than necessary will tend to show up before the lump sum settlement is exhausted. *Id.*

If the claimant makes a bad bargain, that tends to show up at the end. The injury becomes more disabling with time or the claimant lives past his life expectancy. *Id.* There is no way to allow a claimant to rescind a lump-sum settlement if it turns out to have been a poor decision.

The Fifth Circuit's reasoning is compelling. It explains why jurisdictions require Commission approval. The approval process is there to protect claimants. Claimants "are typically unskilled[,] untutored in actuarial principles [and frequently awed by large amounts of cash.]" *Id.* Insurers, however, have "claims representatives and attorneys [who] are experienced negotiators with actuarial principles firmly in mind." *Id.* There is no public policy need to protect an insurance company from a bargain that turns out not to be as good as originally thought.

And most importantly, there is no reasoned basis for violating basic contract law and allowing a party to walk away from a written agreement for any reason or for no reason at all. A large part of the reason parties are attracted to the negotiating table is that it affords them the opportunity to end the unpredictability of litigation and gain certainty. A right to renege is bad for everybody. It has no basis in the Act's text or in general principles of law.

II. Enforcing the mediation agreement is consistent with the Commission's regulations. Nothing in the regulations prevents the Commission for enforcing a mediation agreement that requires the parties to execute a "clincher."

Regulation 67-801 explains the parties may settle a case by signing a designated form, by signing an agreement for permanent disability/disfigurement compensation, or by signing an agreement and final release. Regulation 67-803A explains an agreement and final release (a "clincher") must have five pieces of information: the case's caption, a statement of the facts at issue, the date of the injury, the amount of the settlement and the terms, and certain signatures.

The mediation agreement in this case had the case's caption, the amount of the settlement and the terms, and the signatures of the relevant parties. The mediation agreement did not

contain the statement of the facts at issue as well as the date and nature of the injury. Thus, the mediation agreement here satisfied some, but not all, of the regulations's requirements.

One position against enforcing the mediation agreement would be to say that there is no "settlement" until the parties execute a document satisfying all parts of the regulation.

Appellants actually agree with this position. They agree a case is not settled until a clincher is signed. But that is a different question from the question at issue here. Appellants are not asking to *file* the mediation agreement and have it approved as a clincher even though it does not meet the requirements of a clincher. Appellants seek an order *enforcing* the mediation agreement and compelling the defendants to prepare the clincher so that it may be executed and filed as Regulation 67-803 requires.

A defensible response to this sort of situation might be to conclude it could all be handled with drafting. Mediators could alter their practice so mediation agreements would contain everything necessary for a clincher. Parties could even include language in the clincher about how to handle contingencies if other documents need to be prepared. Appellants would have no argument if, for example, the mediation agreement had said "this settlement becomes ineffective if the Claimant dies between now and the execution of a clincher."

Those are fair points, and better drafting is always advisable, but focusing on drafting better mediation agreements would miss the crucial point here. Here, the point is about respecting established legal principles versus upending those principles because it is necessary or advisable to do so. Appellants maintain it is neither necessary nor advisable to upend basic contract principles and hold that a written agreement following a successful mediation may be reneged by either party.

III. Though the point is purely a technical one given the circumstances in this case, the Estate is the proper party to enforce the settlement.

This final argument pertains to the proper party who may enforce the settlement. The right to enforce the agreement belongs to Claimant's Estate. A settlement agreement is a contract, and any contractual rights Claimant possessed at the time of his death are property of the Estate by operation of the survival statute. S.C. Code Ann. § 15-5-90.

There are other examples in South Carolina where estates have participated in workers' compensation cases. *McMahan v. S.C. Dep't of Education*, 417 S.C. 481, 486, 790 S.E.2d 393, 396 (Ct. App. 2016) (noting the Form 50 was filed by the claimant's estate); *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 117, 754 S.E.2d 486, 489 (2014) (estate brought action against employer and carrier to enforce lump sum award); *Estate of Covington by Montgomery v. AT & T Nassau Metals Corp.*, 304 S.C. 436, 437-438, 405 S.E.2d 393, 394 (1991) (personal representative of estate substituted as claimant). If the settlement is enforceable, the Estate owns the rights to it. If the settlement is not enforceable, the claim has abated.

In this case, however, the identity of proper party makes no difference. Laura King is the only dependent who would be entitled to the Claimant's award if the rights to benefits were determined by the Act's rules regarding abatement. She is also the sole beneficiary of the Claimant's estate. Thus, Ms. King is the ultimate party in interest under both avenues.

CONCLUSION

For the foregoing reasons the Commission should hold the mediation agreement is binding and may not be rescinded on account of Claimant's death.

August 20, 2018

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BEFORE THE
APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1116698

Gus A. King,

Claimant/Appellant,

vs.

Pierside Boatworks,

Employer,

and

PMA Insurance Group,

Carrier,

Defendants/Respondents.

Respondents' Brief

The respondents, Pierside Boatworks and PMA Insurance Group, (collectively, "Defendants"), hereby submit this Respondents' Brief in response to the Brief of Appellants filed on or about August 20, 2018. The Brief of Appellants purports to be filed on behalf of the deceased Claimant, Gus A. King, and Claimant's widow, Laura King. In addition, the brief was "conditionally" filed on behalf of Bob Horne, the Personal Representative of the deceased Claimant's Estate. For the purpose of this Brief, Defendants refer to the putative appellants collectively as "Appellants." Defendants, nevertheless, contend that Claimant, as a deceased individual, has no standing in this appeal. Furthermore, Defendants note that Bob Horne, on behalf of the Estate of Claimant, is not a party to this appeal as his motions to intervene have been twice denied by the Commission.

In this appeal, Appellants seek Commission enforcement of a settlement agreement reached at mediation ("Mediation Agreement"). Defendants contend that the hearing Commissioner correctly ruled that the Mediation Agreement is not enforceable on the grounds that it does not comport with the requirements of the South Carolina Workers Compensation Act (the "Act") and the Regulations of the Commission to be a binding and enforceable Agreement and Final Release.

BACKGROUND

The facts in this case are essentially undisputed. The underlying claim involves an admitted injury to Claimant that occurred on November 18, 2011. Pursuant to an Award and Order issued May 20, 2014, Claimant was found to be permanently and totally disabled as a result of his injuries and entitled to lifetime future causally-related medical care and treatment. Claimant was awarded a lump sum award of his permanent and total disability benefits and a Form 19, *Status Report and Compensation Receipt*, was filed on September 10, 2014, showing that Defendants had paid Claimant all indemnity benefits to which he was entitled and the claim was closed. Defendants, thereafter, continued to provide Claimant with the causally-related medical care to which he was entitled under the May 20, 2014 order.

A mediation between Claimant and Defendants was held on June 2, 2016, for the purpose of negotiating and settling out Claimant's future medical treatment. At the conclusion of the mediation, the parties signed an Agreement Following Mediation Conference (the "Mediation Agreement") memorializing the general terms of the negotiated settlement. The Mediation Agreement specifically provided: "The employer/carrier will prepare an Agreement and Release, releasing all parties or entities from all claims by the claimant which will be signed by the claimant and claimant's attorney." One week later, on or about June 9, 2016, Claimant was killed.

in an unrelated motor vehicle accident. No Agreement and Final Release (clincher) was ever signed by Claimant or filed with the Commission. After learning of the death of Claimant, Defendants notified Claimant's attorney that they were placing the settlement on hold to determine how to proceed. Defendants later withdrew from the settlement on the grounds that Claimant's claim abated at his death.

A hearing was conducted on March 29, 2018, before Commissioner Susan S. Barden ("Single Commissioner"). On May 1, 2018, the Single Commissioner issued a Decision and Order finding that the mediation agreement did not satisfy the requirements of the Act to constitute an Agreement and Final Release and the Commission lacked the statutory authority to enforce it.

ARGUMENT

Appellants argue that the Commission should hold that the Mediation Agreement in this case is binding and enforceable. In fact, Appellants argue that all such agreements should be binding and enforceable despite the lack of a statutory or regulatory enforcement mechanisms and contrary to established practice within the Commission. The Single Commissioner correctly rejected this argument in holding that only an Agreement and Final Release, prepared in conformity with the Commission's regulations and filed with the Commission, can be an enforceable agreement under the Act.

1. South Carolina law does not authorize enforcement of a settlement agreement by the Commission.

This issue was directly decided by the South Carolina Court of Appeals in Mackey v. Kerr-McGee Chemical, Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). In that case, the defendants sought enforcement of a settlement agreement entered into with the claimant immediately prior to a hearing on the claim. The parties, at the call of the case, announced to the

hearing commissioner that the case had been settled and the hearing was cancelled. The claimant later rejected the settlement and refused to sign the written settlement agreement. At a subsequent hearing, the single commissioner held that, as a matter of law, the settlement was binding on the claimant. On appeal, a circuit court judge reversed the Commission's decision and the S.C. Court of Appeals affirmed. As stated in that case, "Certainly, an employee or his dependents who had agreed to accept a settlement could withdraw from that agreement at any time prior to verification and filing, and we see no reason why the employer and his insurer cannot do the same thing." Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (quoting with approval, Pepitone v. State Farm Mut. Ins. Co., 346 So. 2d 266 (La. Ct. App. 1977)) (emphasis added). Thus, this case firmly establishes the rights of parties to withdraw from a settlement agreement at any time prior to that agreement being filed with the Commission.

Appellants contend that Mackey is no longer valid because it was decided prior to the 2007 amendments to the Act. Prior to 2007, the Act provided:

A copy of the settlement agreement must be filed by the employer with and approved by only one member of the commission if the employee is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with and approved by four members of the commission.

S.C. Code §42-9-390 (Supp. 2006) (emphasis added). With the 2007 amendments, this section was amended to provide:

The employer must file a copy of the settlement agreement with the commission if each party is represented by an attorney. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with the commission and approved by one member of the commission.

S.C. Code §42-9-390 (2015) (emphasis added). While the General Assembly removed the requirement for Commission "approval" of settlement agreements, it did not remove the requirement for "filing" such agreements. Thus, the reasoning cited in Mackey remains

consistent with the current iteration of the Act. See Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (“an employee or his dependents who had agreed to accept a settlement could withdraw from that agreement at any time prior to verification and filing . . .”) (emphasis added); see also Haley v. Tire Kingdom, 2013 WL 8507874 (Ct. App. April 24, 2013) (“We found no evidence in the record that Haley executed the clincher agreement or that Tire Kingdom filed it with the commission. Without these formalities, the agreement cannot be enforced.”). As such, Mackey remains good law in South Carolina and expressly provides that a party may withdraw from a settlement at any time prior to execution of a compliant agreement and that agreement being filed with the Commission. Since neither was done in this case, Defendants’ withdrawal from the settlement precludes any action to enforce the agreement reached at mediation.

2. Contract law has no application to proceedings under the Workers Compensation Act.

Appellant argue, without authority, that “basic contract principles” governs the enforcement issue in this case. See Brief of Appellants, p. 2 (“Parties expect, and are entitled to expect, that basic contract principles will apply and that written agreements will be enforced.”) This argument, however, was expressly rejected in Mackey and nothing in the 2007 amendments changes this. In Mackey, the employer argued the same position asserted by Appellants in this case. The Court of Appeals, by adopting the decision of the Circuit Court, held:

Counsel for the employer/carrier argues that because the claimant was represented by competent counsel and there had been shown no fraud or mistake in the acceptance of the offer, claimant is bound by the agreement. In support of this proposition, he cites [citations omitted]. This argument is without merit. These cases did not involve a worker’s compensation claim, and more importantly, were decided on principles of general contract law. Contract law principles are inapplicable here because §42-1-310 provides that employee claims for compensation are governed exclusively by the worker’s compensation act.

Mackey, 280 S.C. at 270, 312 S.E.2d at 568 (emphasis added); see also S.C. Code §42-1-540 (“The rights and remedies granted by this Title . . . shall exclude all other rights and remedies . . .

at common law or otherwise, on account of such injury, loss of service or death.”). As stated by the South Carolina Supreme Court:

The Workers’ Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional. The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute. These include the procedures for adjudicating a compensation claim as well as the terms and conditions of substantive entitlement.

Estate of Covington by Montgomery v. AT & T Nassau Metals Corp., 304 S.C. 436, 439, 405 S.E.2d 393, 394 (1991) (citations omitted, emphasis added). Neither the 2007 amendments to the Act, nor any subsequent case law, have changed the fundamental principal that all rights and benefits established by the Act are governed by the Act exclusively.

Based on these authorities, common law contract principles have no application to the issues before the Commission in this appeal and afford Appellants no support for their position that the Commission can enforce a settlement agreement reached at mediation but rescinded prior to the execution and filing of an Agreement and Final Release.

3. The Commission cannot compel Defendants to execute and file a clincher.

In their brief, Appellants argue that the Commission has the authority to compel Defendants to prepare a clincher agreement so that it may be executed and filed in accordance with the regulations. In making this argument, Appellants effectively concede that the mediation agreement does not meet the requirements of the Act and cannot be filed with the Commission or enforced as is. See Appellants’ Brief, p. 8 (“Appellants are not asking to *file* the mediation agreement and have it approved as a clincher even though it does not meet the requirements of a clincher.”) (emphasis in original). Appellants’ position would require the Commission to exercise authority not granted to it under the Act in order to compel Defendants to create and file

a clincher to resolve a claim that has abated and comply with a settlement that has been rescinded. There is simply no statutory or case law authority for such an unprecedented order.

Under the Act, parties are free to enter into voluntary settlements. See S.C. Code §42-9-390. Notwithstanding the requirement that such agreements “must” be filed with the Commission, the Commission’s regulations specify what must be included in such agreements. The regulations authorize the parties to agree to settle a claim “by signing an Agreement and Final Release (clincher).” S.C. Code Regs. § 67-801(A). The regulations further specify the content of a clincher. See S.C. Code Regs. § 67-803. These regulations require the parties to “agree to the terms of a settlement by entering into an Agreement and Final Release” that includes: (1) the caption of the claim, (2) statement of the facts, (3) the date and nature of the injury; (4) the amount of the settlement and terms of payment; and (5) the signature of the claimant. It is undisputed that the mediation agreement at issue does not meet these requirements. Nevertheless, despite the fact that the Commission’s regulations specify that these are the requirements for agreeing to the terms of a settlement, Appellants contend that the Commission has the authority to compel the creation of a clincher after the settlement agreement has been rescinded and after the claimant has died. No such authority exists.

It is clear that the Commission, as a creation of statute, is imbued with only those powers conveyed by statute. See e.g., Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) (“An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose.”). The Single Commissioner correctly held that the filing of a clincher is an explicit statutory requirement under the Act. The Single Commissioner further correctly held that no clincher was ever executed in this case and, therefore, there was nothing to file. The Single Commissioner also correctly noted that the Commission rules on

mediations do not provide for any enforcement mechanism of settlements reached at mediation. Nowhere does the Act provide that the Commission has the authority to compel a party to formalize and execute a clincher that the party does not agree to. In fact, as noted above, South Carolina permits a party to rescind a settlement agreement at any time prior to the execution and filing of the clincher. See Mackey, 280 S.C. at 270, 312 S.E.2d. Appellants understandably have an interest in seeking to enforce this mediation agreement but the Act and the Commission regulations simply do not provide the authority to do so.

4. The majority rule in other jurisdictions is that settlement agreements lacking statutory compliance are not enforceable.

The South Carolina case law discussed above is consistent with the general rule that workers' compensation settlements must be followed to the letter before they are binding. See 13 Larson, Workmen's Compensation Law § 132.06 ("If the statute requires that a settlement have Commission approval, a settlement lacking such approval amounts to nothing more than a voluntary payment of compensation. . . . *Generally, the statutory requirements for obtaining approval must be followed to the letter.*") (emphasis added). For example, in Barncord v. State, Dep't of Transp., 4 Kan. App. 2d 368, 606 P.2d 501 (Kan Ct. App. 1980), aff'd sub nom. 228 Kan. 289, 613 P.2d 670 (1980), the Court of Appeals of Kansas held that settlement provisions were unenforceable because the agreement between the parties was not approved by the Director of the Workmen's Compensation Fund or otherwise in a form recognized under Kansas law. Barncord, at 373, 606 P.2d at 506 ("The parties are not bound by an agreement as to compensation unless the agreement is properly approved in accordance with the statutory provisions."); see also, Facchine v. W.C.A.B. (Pure Carbon Co. & PMA Grp.), 883 A.2d 720, 723 (Pa. Commw. Ct. 2005) (approving Worker's Compensation Judge's decision to deny settlement agreement as it did not comply with statutory requirements); Lebid ex rel. Lebid v.

W.C.A.B. (Cty. of Chester), 771 A.2d 79 (Pa. Commw. Ct. 2001) (settlement not in compliance with state's workers' compensation act deemed null and void).

While many of the cases addressing this issue involve statutes that require Commission approval of settlement agreements, the principal consideration is compliance with statutory formality, not the significance of approval per se. In addition to failing to show that South Carolina's statutory and regulatory requirements support enforcement of the Mediation Agreement in this case, Appellants' cited authorities are factually distinguishable from this case and do not support their position. For example, in Schuck & Sons Const. v. Indus. Comm'n of Ariz., 963 P.2d 310, 311 (Ct. App. 1998), the agreement at issue was actually executed and filed with the Commission prior to the death of the claimant. In finding that the agreement was enforceable, the Arizona court noted that the validity and enforceability of settlement agreements "must be determined according to contract principles." Schuck, 963 P.2d at 313. As discussed above, South Carolina has expressly rejected this rule of construction.

Similarly, in B. Frank Joy Co. v. Isaac, 636 A.2d 1016 (Md. 1993), the employee and employer entered into a settlement agreement and submitted that agreement to the commission for approval. In affirming the enforcement of the agreement, the court noted that the Maryland statute required approval of an agreement in order to be enforceable but stated:

That does not mean, however, that the parties have total freedom to renege a valid bilateral agreement they have formally submitted for Commission approval in compliance with the Act. When they present a duly executed settlement agreement to the Commission, the parties thereby relinquish control of the matter to the supervisory powers, authority, and discretion bestowed upon the Commission. Then a party, acting unilaterally, does not have unfettered license to withdraw what that party has submitted in good faith.

Isaac, 636 A.2d at 1025 (emphasis added); see also Ferreira v. Arrow Mut. Liability Ins. Co., 447 N.E.2d 1258, 1259-60 (Mass. App. Ct. 1983) ("we believe that when an instrument with the

finality of an agreement for redeeming liability has been executed and filed with the Division . . . the insurer may no longer unilaterally rescind the agreement.”) (emphasis added); Taylor v. Reliance Well Serv. Inc., 220 So.3d 260 (Miss. Ct. App. 2017) (“Reliance Well has not shown how Taylor’s death, after the settlement was already signed by the parties and submitted to the Commission, has any bearing on this issue.”); Rojo v. Loeper Landscaping, Inc., 759 P.2d 194 (N.M. 1988) (“[a]ll of the elements mandating approval and precluding disapproval were found to exist when the agreement was presented to the hearing officer . . .”).

In this case, South Carolina law expressly requires the execution and filing of a clincher, signed by the claimant and containing the regulatory prescribed information. Absent compliance with those statutory and regulatory requirements, the agreement is not final and the Commission lacks the authority to enforce it.

5. The Single Commissioner correctly ruled that parties retain the right to rescind any agreement not entered into with the formalities of the Act and filed with the Commission.

Appellants contend that allowing parties to “back out” of an agreement reached at mediation would render such agreements “not really worth anything and the value of the mediation process is diminished.” It is Appellants’ contention that parties sign written settlement agreements at the conclusion of a successful mediation due to the “guarantee of enforcement.” As with the general discussion above on the enforceability of the mediation agreement, it is important to note that the Commission’s regulations on mediation do not provide for any “guarantee of enforcement” of any settlement reached at mediation. In fact, the regulations do not make any requirement for memorializing a settlement agreement or filing of any document other than the Form 70, *Mediator Report*. In the absence of any authority in the regulations or statute, the Commission does not have the power to grant the relief requested by Appellants.

Appellants further argue that ruling the agreement unenforceable will create a situation that favors employers and carriers over claimants. Without regard to the relative futility in articulating the various ways in which parties may come to discover whether they have made a good bargain or not, enforcing this Mediation Agreement would create a substantial and unearned windfall to whomever would be the recipient of such funds. The settlement at issue here was a compromise of potential future medical benefits that Claimant was entitled to as a result of his injuries. This settlement did not involve any compensation or payments for disability. None of the funds at issue are recoverable by the Estate or any statutory dependents under the Act. In fact, these funds were intended by the parties to provide a fund from which Claimant could draw for his future medical needs, which were extensive, and would otherwise have never been paid directly to Claimant. At Claimant's death his right to such benefits abated as a matter of law and would never have been a corpus paid to any dependent or heir. Setting aside the Commission's statutory authority and regulatory requirements, an order to enforce this mediation agreement would not further the ends of the Act.

6. Claimant's claim abated at his death and his estate is not a proper party to the claim.

In the absence of a duly executed, filed, and approved Agreement and Final Release, Claimant's claim abated at his death and no benefits remain payable. If such benefits did exist, they would only be recoverable by Claimant's statutory dependents. Without conceding the appealability of this issue, Defendants contend that neither Claimant, nor his Estate, have standing to make a claim or appeal the Single Commissioner's order.¹

¹ It is unclear whether the appeal of the Estate's various petitions to intervene have been preserved. The Estate's initial motion was denied by an October 26, 2017 Order. An appeal of that Order was dismissed on December 11, 2017. The Estate's Renewed Motion to Intervene was denied by order dated February 13, 2018 and a subsequent Form 30 was dismissed as untimely.

In Estate of Covington by Montgomery v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 S.E.2d 393 (1991), the South Carolina Supreme Court discussed what happens under the Act when a claimant dies under the three applicable statutory provisions: (1) S.C. Code Ann. §42-9-280 (death unrelated to work); (2) S.C. Code Ann. §42-9-290 (death related to work); and (3) S.C. Code Ann. §42-9-140 (decedent leaves no dependents). The case involved a claim by the claimant's mother who was the claimant's personal representative and sole heir at law. The mother was substituted into the case as the claimant following her daughter's death from a cause unrelated to the work injury. The South Carolina Supreme Court identified the sole issue was whether death abates a workers' compensation claim where an employee dies without dependents from a non-work related injury. In deciding that issue, the Court held that the daughter's claim did abate at her death and her mother, who was not a dependent next of kin, was not entitled to receive any benefits under the Act. Covington, 304 S.C. at 439, 405 S.E.2d at 394 ("Here, Montgomery, the mother, is not dependent, nor is the injury work-related. This renders the claim noncompensable.") Moreover, the Court rejected the mother's claim that she had some right to recovery under S.C. Code Ann. §15-5-90 (survival statute). The Court held that the Act is a derogation of common law rights and supersedes the survivor statute such that they have no application with regard to any claims under the Act.

More recently, the South Carolina Supreme Court held that the widow of claimant found to be permanently and totally disabled under S.C. Code Ann. §42-9-10(A) was not entitled to receive the awarded compensation because she did not qualify under S.C. Code Ann. §42-9-280. See Stone v. Roadway Express, 367 S.C. 575, 627 S.E.2d 695 (2006). According to the Court, "since a compensation award, unlike a tort award, is a personal one based on the employee's need for a substitute for lost wages and earning capacity, in the absence of a special statutory

provision, heirs have no claim to unaccrued weekly payments.” Stone, 367 S.C. at 585, 627 S.E.2d at 700 (citing Larson's Workers' Compensation Law (2000) §§ 89.01; 89.03). It is important to note that these cases all address issues of a putative beneficiary's right to receive compensation benefits. No case has held and no provision of the Act provides for a claim of a beneficiary or dependent to receive the value of unaccrued future medical care following the death of a claimant, whether from causes related or unrelated to the workers' comp injury.

Larson's treatise demonstrates that South Carolina's rulings on this issues are consistent with the general rule for unaccrued workers' compensation benefits: “[I]f there are no dependents in the statutory sense, the [unaccrued] award abates.” 7 Larson, Workmen's Compensation Law § 89.03; see also, e.g., Jones v. New Jersey Mfrs. Cas. Ins. Co., 77 N.J. Super. 147, 154, 185 A.2d 678, 682 (App. Div. 1962), aff'd, 39 N.J. 555, 189 A.2d 711 (1963) (holding that when claimant died of causes unrelated to the workplace accident, installment payments previously paid to sole dependent abates); OK Iron & Metal Co. v. Gardner, 872 P.2d 405, 407 (Okla. Civ. App. 1994) (concluding decedent's permanent partial disability award abates when decedent dies leaving only non-minor children); Black v. Billy Penn Corp., 72 Pa. Cmwlth. 628, 457 A.2d 192 (1983) (concluding that when decedent dies from an unrelated cause without statutory dependents, estate is only entitled to reasonable funeral expenses); Sherlin v. Liberty Mut. Ins. Co., 584 S.W.2d 455, 457-58 (Tenn. 1979) (“It appears to be reasonably clear that unaccrued disability benefits, upon the death of the employee, do not survive to his personal representative. . . . It would put an additional burden on the employer, not contemplated by the statutes, to require him to pay either wages or compensation to representatives of an employee who died from natural causes.”).

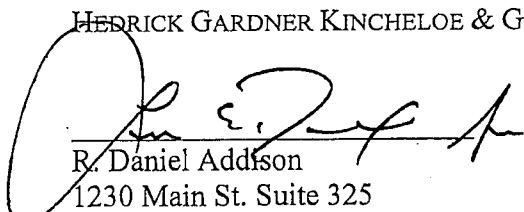
In this case, it is undisputed that King's death was unrelated to his work injury so it is clear that S.C. Code Ann. §42-9-290 has no application. Similarly, the provisions of S.C. Code Ann. §42-9-140 limits an employer's liability to payment of benefits under S.C. Code Ann. §42-9-290 to certain beneficiaries or survivors. S.C. Code Ann. §42-9-140 makes no provision for the payment of benefits when the death is unrelated to the work injury. The only provision of the Act that addresses benefits paid when a death is unrelated to the work injury is S.C. Code Ann. §42-9-280. In that section, the "next of kin dependent upon him for support" are to receive the unpaid balance of compensation that the employee would have received had he lived. Thus, under S.C. Code Ann. §42-9-280, the only parties entitled to any benefits at all are "next of kin dependents" and they are only entitled to receive any balance of unpaid compensation.

While Claimant's surviving spouse, Laura King, may have standing to appeal the order in this case, Defendants contend that Claimant and his Estate do not.

CONCLUSION

Based on the foregoing, and Defendants' respectfully request the Commission affirm the Decision and Order of the Single Commissioner in its entirety.

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Attorneys for Defendants

September 4, 2018

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1116698

EMPLOYEE/CLAIMANT: GUS A. KING

 **COPY**

EMPLOYER: PIERSIDE BOATWORKS

CARRIER: PENNSYLVANIA MANUFACTURERS ASSOCIATION

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 29TH DAY OF
MARCH, 2018, COMMENCING AT THE HOUR OF 11:00 A.M., IN
COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE SUSAN S.
BARDEN, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
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R. DANIEL ADDISON, ESQUIRE
LEE E. DIXON, ESQUIRE
HEDRICK GARDNER KINCHLOE & GAROFALO, LLP
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COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYER/CARRIER.

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING WAS
2 TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY PUBLIC
3 FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA, SOUTH
4 CAROLINA.

5 * * * * * * * * * * * * * * *

6 **BY COMMISSIONER BARDEN:**

7 TODAY'S DATE IS MARCH 29TH, 2018. THIS IS SOUTH
8 CAROLINA WORKERS' COMPENSATION COMMISSION FILE NUMBER
9 1116698. THIS IS THE CASE OF THE DECEDENT, GUS KING.
10 AND WE HAVE REPRESENTING THE CLAIMANT, LAURA KING, WE
11 HAVE ATTORNEYS BLAKE HEWITT AND ALLISON SULLIVAN.
12 AND WE ALSO HAVE REESE STIDHAM, WHO REPRESENTED MR.
13 GUS KING AS FAR AS HIS WORKERS' COMPENSATION CASE.
14 AND I'M SURE THAT INCLUDED THROUGH MEDIATION; IS THAT
15 CORRECT?

16 **BY MR. STIDHAM:**

17 YES, MA'AM.

18 **BY THE COMMISSIONER:**

19 ALL RIGHT. AND WE HAVE AS THE EMPLOYER,
20 PIERSIDE BOATWORKS, AND ITS CARRIER, PENNSYLVANIA
21 MANUFACTURERS ASSOCIATION, BOTH OF WHICH ARE
22 REPRESENTED BY ATTORNEY DAN ADDISON.

23 THE PURPOSE OF TODAY'S HEARING IS TO DETERMINE
24 ISSUES RAISED IN FORMS 50 AND 51.

25 LET'S GO OFF THE RECORD.

(OFF THE RECORD)

BY THE COMMISSIONER:

WE ARE BACK ON THE RECORD. THE AVERAGE WEEKLY WAGE IS \$663.10, YIELDING A COMPENSATION RATE OF \$442.09. THE DATE OF THIS ADMITTED ACCIDENT WAS NOVEMBER 18TH, 2011.

ARE THERE ANY OBJECTIONS TO APAs, JURISDICTION, VENUE, OR ANY OTHER ITEMS? DO YOU HAVE ANY ADDITIONAL SUBMISSIONS OTHER THAN THE ARGUMENTS THAT YOU ARE MAKING HERE TODAY, ANYTHING THAT ANY OF YOU WOULD WISH TO SUBMIT TO THE COMMISSION?

BY MR. HEWITT:

I DO, COMMISSIONER. I HAVE THE APAs ON BEHALF OF MR. KING AS WELL AS A COPY OF OUR LEGAL MEMO.

BY THE COMMISSIONER:

OKAY. ALL RIGHT. THANK YOU.

BY MR. HEWITT:

THANK YOU. I'LL HAND THOSE TO YOU.

BY THE COMMISSIONER:

THAT WOULD BE GREAT. THANKS SO MUCH.

BY MR. HEWITT:

YES, MA'AM.

BY THE COMMISSIONER:

ANYTHING?

BY MR. ADDISON:

1 COMMISSIONER, WE'VE ALREADY SUBMITTED THE MEMOS
2 OF LAW TO YOU. I HOPE -- YOU SHOULD HAVE THOSE.
3 I'VE GOT A MEMORANDUM OF LAW AND THEN A REPLY TO THE
4 CLAIMANT'S MEMORANDUM OF LAW ---

5 BY THE COMMISSIONER:

6 RIGHT.

7 BY MR. ADDISON:

8 --- THAT WAS SUBMITTED TO YOUR OFFICE.

9 BY THE COMMISSIONER:

10 BACK IN MARCH?

11 BY MR. ADDISON:

12 YES, MA'AM.

13 BY THE COMMISSIONER:

14 OKAY. AND I HAVE NOT LOOKED AT THESE SINCE THE
15 LAST TIME THE LAST MOTION WAS FILED.

16 BY MR. ADDISON:

17 THE REPLY WE JUST SUBMITTED ---

18 BY THE COMMISSIONER:

19 OKAY. I HAVE THAT. I DO. THANK YOU.

20 BY MR. ADDISON:

21 --- THIS PAST WEEK.

22 BY THE COMMISSIONER:

23 ALL RIGHT. WITHOUT OBJECTION THE COMMISSION
24 FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION
25 OF SELF-SERVING DECLARATIONS AND UNSTIPULATED MEDICAL

1 REPORTS.

2 AT THIS TIME I'LL ASK EACH PARTY TO PUT A
3 POSITION ON THE RECORD. AND, MR. HEWITT, ARE YOU OR
4 MS. SULLIVAN?

5 BY MR. HEWITT:

6 I'M GOING TO CARRY THE WATER, COMMISSIONER.

7 BY THE COMMISSIONER:

8 ALL RIGHT. GO AHEAD, MR. HEWITT, WHENEVER
9 YOU'RE READY, SIR.

10 BY MR. HEWITT:

11 THANK YOU, COMMISSIONER. MAY IT PLEASE THE
12 COURT. THE ISSUE IN FRONT OF YOU -- IS IT ALL RIGHT
13 IF I SIT, OR WOULD YOU PREFER ---

14 BY THE COMMISSIONER:

15 YOU MAY SIT. THAT'S FINE, IF YOU WOULD LIKE.

16 BY MR. HEWITT:

17 ALL RIGHT. THANK YOU. THE ISSUE IN FRONT OF
18 THE COMMISSION IS WHETHER THE AGREEMENT THE PARTIES
19 ENTERED FOLLOWING THE MEDIATION CONFERENCE, WHICH IS
20 AT PAGE 31 OF THE APAs, IS A BINDING CONTRACT, IS
21 ENFORCEABLE, AND IT'S OUR POSITION THAT THAT
22 AGREEMENT FOLLOWING MEDIATION CONFERENCE IS A BINDING
23 CONTRACT BECAUSE THERE WAS AN OFFER, ACCEPTANCE, AND
24 CONSIDERATION. THE DEFENDANTS PROMISED TO PAY A LUMP
25 SUM IN EXCHANGE FOR A FULL AND COMPLETE RESOLUTION OF

1 THE CLAIMANT'S WORKERS' COMPENSATION CASE, AND WE
2 THINK THAT AGREEMENT HAS TO BE ENFORCEABLE IF IT'S
3 WORTH THE PAPER THAT IT'S PRINTED ON.

4 THE THING THAT I THINK SORT OF LOOKS BAD FOR ME
5 IS THAT THE CLAIMANT'S RIGHT TO COMPENSATION UNDER
6 THE COMP ACT ENDED WHEN THE CLAIMANT DIED. THAT'S,
7 OF COURSE, SAD ON A PERSONAL LEVEL, BUT AS A LEGAL
8 MATTER WE DON'T THINK IT MAKES A DIFFERENCE BECAUSE
9 THE SITUATION IS NO DIFFERENT THAN IT WOULD BE IF WE
10 WERE IN A REGULAR CIVIL CASE, A PERSONAL INJURY CASE,
11 WHERE THERE WAS A CLAIM FOR MONETARY COMPENSATION;
12 THE CASE WAS SETTLED IN MEDIATION; THERE WAS AN
13 AGREEMENT EXECUTED FOLLOWING THE SUCCESSFUL
14 MEDIATION, AND THEN THE CLAIMANT DIED THE NEXT DAY OR
15 TWO DAYS LATER. AND PART OF THE MONETARY SETTLEMENT
16 WAS FOR FUTURE MEDICAL BENEFITS. THE REASON WE SIGN
17 AGREEMENTS AFTER A SUCCESSFUL MEDIATION IS SO WE CAN
18 ENFORCE THE BARGAIN. AND THAT'S THE POSITION OF MY
19 CLIENT, MS. KING, WHO IS THE DECEASED CLAIMANT'S NEXT
20 OF KIN DEPENDENT AND ALSO THE BENEFICIARY OF HIS
21 ESTATE.

22 BY THE COMMISSIONER:

23 ALL RIGHT. IS THAT IT, SIR?

24 BY MR. HEWITT:

25 YES, MA'AM.

1 BY THE COMMISSIONER:

2 ALL RIGHT. MS. SULLIVAN, DO YOU WISH TO ADD
3 ANYTHING? I'LL CERTAINLY...

4 BY MS. SULLIVAN:

5 NO, COMMISSIONER.

6 BY THE COMMISSIONER:

7 ALL RIGHT. THANK YOU. MR. STIDHAM?

8 BY MR. STIDHAM:

9 THANK YOU, COMMISSIONER. BRIEFLY, WE WOULD --
10 WELL, FOR THE RECORD, WE REPRESENTED MR. KING IN HIS
11 UNDERLYING WORKERS' COMPENSATION CASE. IT WAS
12 SETTLED WITH OPEN MEDICAL. FOR A LOT OF REASONS, MR.
13 KING'S COMPLICATED MEDICAL TREATMENT, IT BECAME
14 ADVANTAGEOUS TO BOTH SIDES TO ATTEMPT TO SETTLE HIS
15 FUTURE MEDICAL. WE WERE ABLE TO REACH AN AGREEMENT
16 IN MEDIATION, AND IT'S OUR POSITION THAT THE
17 MEDIATION AGREEMENT SHOULD BE ENFORCEABLE, AND WE
18 WOULD JOIN IN THE ARGUMENTS MR. HEWITT MADE.

19 BY THE COMMISSIONER:

20 OKAY. ALL RIGHT. MR. ADDISON.

21 BY MR. ADDISON:

22 COMMISSIONER, I'LL ADDRESS, FIRST, THE RIGHTS OF
23 THE CLAIMANT. THE CLAIMANT'S RIGHTS ENDED THE MOMENT
24 HE DIED. PURSUANT TO THE STATUTE, MR. KING NO LONGER
25 HAS ANY RIGHTS. IT'S ABATED PER HIS DEATH. IF

1 THERE'S ANY RIGHT OF ANY PARTY TO OBTAIN ANYTHING
2 FROM THE CASE, IT HAS TO FOLLOW THE STATUTE AS TO
3 WHAT, IF ANYTHING, WOULD HAVE TO BE PAID TO ANY
4 MEMBER OF HIS FAMILY THAT WOULD BE IDENTIFIED BY THE
5 STATUTE AS BEING A POTENTIAL DEPENDENT. SO, FIRST
6 AND FOREMOST, IT'S OUR POSITION THAT GUS KING HIMSELF
7 CLEARLY HAS NO CLAIM. HE DIED.

8 THE SECOND PIECE THAT I WOULD STATE THAT IS
9 IMPORTANT FOR YOU TO KNOW IS THAT MR. HEWITT MADE A
10 COMMENT, AND I WROTE IT DOWN BECAUSE IT APPEARED TO
11 BE AN INDICATION THAT THIS SETTLEMENT INCLUDED MONIES
12 FOR INDEMNITY. NOTHING IN THE SETTLEMENT AT THE
13 MEDIATION INCLUDED ANY INDEMNITY DOLLARS. HE HAD
14 BEEN PAID ALL INDEMNITY POSSIBLE UNDER THE ACT,
15 PURSUANT TO A PRIOR ORDER OF THE COMMISSION. HE WAS
16 FOUND TO BE PERM TOTAL BY ANOTHER COMMISSIONER, AND
17 ALL BENEFITS HAD BEEN PAID TO HIM WELL BEFORE THIS
18 MEDIATION OCCURRED. SO, THE ONLY THING THAT WAS
19 BEING DISCUSSED AS A POSSIBILITY FOR SETTLEMENT AT
20 THAT PARTICULAR MEDIATION WAS FUTURE MEDICAL BENEFITS
21 PURSUANT TO THE ACT. THAT WAS THE ONLY THING THAT
22 WAS DISCUSSED. THAT WAS ALL THAT WAS TALKED ABOUT,
23 WAS THE POTENTIAL VALUE OF HIS FUTURE MEDICAL. ALL
24 INDEMNITY THAT COULD HAVE BEEN PAID IN THE CASE HAD
25 BEEN PAID PRIOR TO THE MEDIATION OCCURRING. SO, AS

1 AN ECONOMIC RIGHT, QUITE FRANKLY NOBODY INVOLVED
2 WOULD HAVE RECEIVED A DIME HAD WE NOT SETTLED ANYWAY.
3 THE ONLY THING THAT WAS BEING REDUCED TO SOME VALUE
4 WAS THE FUTURE MEDICAL THAT EVERYONE EXPECTED MIGHT
5 COME OUT OF THE CASE. IT WAS A HORRIFIC CASE. THE
6 MAN WAS VERY BADLY INJURED, AND THE POTENTIAL
7 MEDICALS WERE PRETTY HIGH.

8 LEADING UP TO THIS MEDIATION -- AND THIS IS IN
9 THE COMMISSION FILE -- THERE WERE SOME EVENTS THAT
10 OCCURRED WITH THE MEDICAL CARE IN GEORGIA -- EXCUSE
11 ME; IN ALABAMA -- WHERE THE CLAIMANT HAD SOME ISSUES
12 AND THERE WERE SOME CONCERNS. WE ACTUALLY CAME AND
13 MET WITH THE CHAIRMAN OF THE COMMISSION REGARDING
14 THOSE ISSUES. MR. KING SHOWED A GUN TO A NURSE CASE
15 MANAGER, AND AS A RESULT OF THAT PARADIGM, WHO HAD
16 THE CONTRACT FOR TAKING CARE OF THE MEDICAL INTO
17 THEIR CONTRACT, AND THE DOCTOR THAT WAS SEEING HIM
18 REFUSED TO SEE HIM ANY FURTHER. WE HAD TO TRY TO SEE
19 IF WE COULD FIGURE OUT SOMEBODY ELSE TO GET HIM TO.
20 THAT WAS ALL GOING ON IN THE BACKGROUND. THERE WERE
21 SOME DISCUSSIONS ABOUT TRYING TO SEE IF WE COULD
22 POSSIBLY SETTLE THE CASE, AND THAT'S WHERE THE
23 PARTIES DETERMINED TO ENTER INTO MEDIATION.

24 MEDIATION THEN OCCURRED, AND THE PARTIES
25 DISCUSSED THE VALUES OF POTENTIAL SETTLEMENT OF THE

1 FUTURE MEDICALS SO THAT MR. KING COULD GO OBTAIN
2 MEDICAL FROM WHOEVER HE WANTED TO. WE CAME TO AN
3 AGREEMENT. THERE ARE NO IFS, ANDS, OR BUTS. THE
4 AGREEMENT OCCURRED ON MEDIATION DATE, AND THE
5 DOCUMENT WAS SIGNED. IT IS THIS AGREEMENT THAT
6 THEY'RE TRYING TO ENFORCE, WHICH WAS A POST-MEDIATION
7 STATEMENT INDICATING THAT THE PARTIES HAD COME TO AN
8 AGREEMENT TO PAY MR. KING ONE MILLION DOLLARS FOR HIS
9 FUTURE MEDICAL. AND THAT WAS SIGNED BY ME. IT WAS
10 SIGNED BY MY CLIENT, PMA, AND IT WAS SIGNED BY
11 ATTORNEY CHRISTMAS, AND IT WAS SIGNED BY THE
12 CLAIMANT. IT WAS ALSO SIGNED BY EARL ELLIS, WHO WAS
13 THE MEDIATOR. AND THAT'S ALL THAT WAS DONE.

14 MR. KING THEN DIED IN A CAR WRECK A COUPLE OF
15 DAYS LATER. I FOUND OUT. I CALLED MR. CHRISTMAS,
16 AND I SAID, YOU KNOW, YOU NEED TO HOLD THIS. WE'RE
17 NOT GOING TO AGREE TO THESE DOCUMENTS. WE HAD
18 FORWARDED THE DOCUMENTS TO THE CLAIMANT FOR
19 SIGNATURE. AND, OBVIOUSLY, MR. KING COULDN'T SIGN IT
20 BECAUSE HE WAS NOW DEAD. SO, THERE WAS NOBODY THAT
21 WOULD HAVE BEEN ABLE TO SIGN ON HIS STEAD AT THAT
22 POINT ANYWAY. WE THEN SAID WE BELIEVE THAT THIS IS
23 ABATED, AND THAT BEGAN THIS PROCESS.

24 WE'VE BRIEFED THIS EXTENSIVELY WITHIN TWO
25 SEPARATE DOCUMENTS THAT I'VE SUBMITTED TO YOU, AN

1 INITIAL MEMORANDUM LAW THAT APPLIED TO THE BRIEF AND
2 MEMO OF LAW FROM -- I'M JUST GOING TO CALL IT THE
3 PLAINTIFF'S SIDE TO MAKE IT EASIER. WE BRIEFED THE
4 ISSUES AT LENGTH, AND THE BOTTOM LINE IS THIS: OUR
5 STATUTE CHANGED, BUT IT DIDN'T CHANGE TO THE POINT
6 THAT THE CLAIMANT PREVAILS. WE'VE CHANGED THE
7 STATUTE, AND WE INDICATED THAT THERE WOULD BE A
8 LITTLE MORE STREAMLINED VERSION OF HOW ONE WOULD DO A
9 SETTLEMENT IN SOUTH CAROLINA. AS YOU KNOW, AS A
10 COMMISSIONER, THAT OCCURRED DURING YOUR TIME AS THE
11 COMMISSIONER. THE PROBLEM IS THE LAW STILL SAYS THAT
12 THE DOCUMENT ITSELF HAS TO BE FILED AT THE
13 COMMISSION, THE DOCUMENT BEING THE SETTLEMENT
14 DOCUMENT THAT HAS TO BE DONE IN THE MANNER IN WHICH
15 THE STATUTE SAYS THAT IT HAS TO BE DONE, AND THAT'S
16 PRETTY CLEAR. IT'S BLACK LETTER LAW. THIS IS SOUTH
17 CAROLINA BLACK LETTER LAW. THE CASES CITED BY THE
18 CLAIMANT ARE FROM THE OTHER SIDE OF THE COUNTRY, AND
19 THEY ARE NOT DISPOSITIVE AS TO THE ISSUES OF WHAT THE
20 SOUTH CAROLINA WORKERS' COMP STATUTE SAYS MUST OCCUR
21 FOR THE SETTLEMENT TO BE ENFORCEABLE. THAT'S WHAT'S
22 GOING TO BE REQUIRED IN THIS CASE. IT'S WHAT DOES
23 SOUTH CAROLINA SAY IS REQUIRED, AND IT'S CLEAR THAT
24 THE SETTLEMENT DOCUMENT, THE CLINCHER, WOULD HAVE HAD
25 TO HAVE BEEN COMPLETED, SIGNED BY ALL PARTIES, AND

1 THEN FILED AT THE COMMISSION. THAT DID NOT OCCUR.
2 THE ONLY THING THAT OCCURRED WAS THIS FAIRLY BRIEF
3 DOCUMENT THAT WAS DONE POST-MEDIATION. IT'S NOT A
4 CLINCHER DOCUMENT. IT DOESN'T HAVE ALL THE LANGUAGE
5 THAT WOULD BE REQUIRED IN A CLINCHER DOCUMENT. IT IS
6 A HERE'S THE INTENT OF THE PARTIES, INTENT BEING THE
7 OPERATIVE TERM.

8 THIS CASE, OBVIOUSLY, IS GOING TO GO ALL THE WAY
9 UP. SO, I JUST WANT TO MAKE SURE IT'S VERY CLEAR FOR
10 YOU AS A COMMISSIONER. OUR POSITION IS ALL -- EVERY
11 BIT OF THE DETAILS OF WHAT THEY'RE ASSERTING OCCURRED
12 OCCURRED. WE ENTERED A SETTLEMENT WITH THE CLAIMANT.
13 THE QUESTION HERE IS WHETHER OR NOT IT IS AN
14 ENFORCEABLE SETTLEMENT AS A RESULT OF THE DEATH OF
15 THE CLAIMANT PRIOR TO THE DOCUMENTS BEING COMPLETED
16 AND SUBMITTED TO THE COMMISSION FOR FILING AND
17 SIGNATURE BY THE COMMISSION. EVEN THOUGH WE ALL KNOW
18 IT'S A RUBBER STAMP DONE BY A STAFF MEMBER, IT'S
19 STILL REQUIRED THAT IT BE FILED AT THE COMMISSION AND
20 THAT IT BE DONE IN THE PROPER MANNER PURSUANT TO THE
21 STATUTE. I'VE BRIEFED THAT AT LENGTH, AND THAT'S
22 WHAT WE BELIEVE TO BE THE LAW, AND I DON'T KNOW THAT
23 YOU CAN GO OUTSIDE OF THAT.

24 BY THE COMMISSIONER:

25 ALL RIGHT. MR. HEWITT, DO YOU WISH TO RESPOND,

1 SIR?

2 BY MR. HEWITT:

3 A COUPLE OF POINTS, AND IF YOU HAVE QUESTIONS
4 I'D BE GLAD TO DO MY BEST TO TAKE A WHACK AT THEM.
5 YOU KNOW, THERE WAS SOME DISCUSSION IN THE MOMENTS
6 PRIOR ABOUT THIS DOCUMENT REFLECTING THE PARTIES' --
7 THIS IS THE PARTIES' FUTURE INTENT TO SETTLE
8 SOMETHING... THE WORD "INTENT" DOESN'T APPEAR AT ALL
9 IN THE DOCUMENT THAT I'M LOOKING AT, PAGE 31 OF THE
10 APAs. IT SAYS, FOLLOWING THE MEDIATION ---

11 BY THE COMMISSIONER:

12 WELL, LET ME ASK YOU A QUESTION.

13 BY MR. HEWITT:

14 YES, MA'AM.

15 BY THE COMMISSIONER:

16 AND I KNOW -- I DON'T KNOW HOW MUCH COMP YOU DO,
17 WHETHER THAT'S YOUR DAILY BREAD AND BUTTER OR THAT'S
18 PART OF YOUR PRACTICE, OR WHATEVER. BUT IN THE
19 HISTORY OF -- SINCE WE'VE HAD MEDIATION, I MEAN,
20 WOULD THIS BE -- CAN'T YOU IMAGINE, AT LEAST, OR
21 MAYBE YOU HAVE EXPERIENCE WITH CASES THAT MAY HAVE
22 BEEN SUCCESSFULLY MEDIATED BUT THEN SOMEBODY DECIDES
23 THEY DON'T WANT TO SIGN THE CLINCHER?

24 BY MR. HEWITT:

25 SO, MY IMPRESSION OF THE REASON ---

1 BY THE COMMISSIONER:

2 YOU'RE SAYING THAT THOSE WOULD ALL BE
3 ENFORCEABLE ONCE A CLAIMANT AND AN ATTORNEY FOR A
4 CARRIER SIGNED THE MEDIATION AGREEMENT, THAT THERE IS
5 NO BACKING OUT?

6 BY MR. HEWITT:

7 ABSOLUTELY. OTHERWISE, THIS PAPER DOESN'T MEAN
8 ANYTHING. AND THIS PAPER DOESN'T TALK ABOUT A FUTURE
9 AGREEMENT. IT SAYS, "THE PARTIES AGREE THAT THIS
10 CASE HAS BEEN FULLY AND COMPLETELY RESOLVED."

11 BY THE COMMISSIONER:

12 SO IF I HAVE A CONFERENCE WITH AN UNREPRESENTED
13 CLAIMANT AND THE CLAIMANT AGREES -- OR MAYBE THE
14 CLAIMANT AGREES BEFORE A HEARING AND THE CLAIMANT IS
15 REPRESENTED, AND WE'RE GETTING READY TO HAVE A
16 HEARING, AND THE CLAIMANT'S LAWYER SAYS, "THE
17 CLAIMANT HAS AGREED TO SETTLE. WE'RE NOT GOING TO
18 HAVE THE HEARING, SO YOU DON'T NEED TO HAVE THIS
19 HEARING; YOU DON'T NEED YOUR COURT REPORTER TO
20 TRANSCRIBE THE HEARING; WE'RE NOT HAVING ONE; THE
21 CLAIMANT HAS DECIDED TO SETTLE." AND THEN I GET WORD
22 LATER THAT THE CLAIMANT HAS DECIDED THAT HE OR SHE
23 DOESN'T WANT TO SETTLE. AND MAYBE I EVEN PUT IT ON
24 THE RECORD, AND THEY WERE UNDER OATH; DO YOU THINK
25 THIS IS FAIR? DO YOU THINK THIS IS -- DO YOU WANT TO

1 ENTER INTO THIS? AND THEY'RE UNDER OATH, AND THEY'RE
2 SAYING THEIR GOING TO DO IT.

3 BY MR. HEWITT:

4 SO, I JUST WANT TO MAKE SURE I UNDERSTAND THE
5 QUESTION CORRECTLY. I DIDN'T CUT YOU OFF, DID I?

6 BY THE COMMISSIONER:

7 NO, NO, NO. WE'RE JUST -- I'M JUST ASKING A
8 QUESTION.

9 BY MR. HEWITT:

10 SO, WE'VE GOT A REPRESENTED EMPLOYER AND AN
11 UNREPRESENTED ---

12 BY THE COMMISSIONER:

13 NO, I CHANGED MY FACT PATTERN ON YOU. EVERYBODY
14 IS REPRESENTED.

15 BY MR. HEWITT:

16 OKAY.

17 BY THE COMMISSIONER:

18 IS THAT CLAIMANT NOT ALLOWED -- CAN THEY FORCE
19 THE CLAIMANT TO SIGN ---

20 BY MR. HEWITT:

21 YES.

22 BY THE COMMISSIONER:

23 --- THE CLINCHER?

24 BY MR. HEWITT:

25 YES, BECAUSE IT'S AN AGREEMENT -- I THINK THE

1 ANSWER IS YES. IT'S AN AGREEMENT ON THE RECORD.

2 BY THE COMMISSIONER:

3 BECAUSE I CAN TELL YOU, IN THE HISTORY OF THIS
4 COMMISSION THERE ARE LOTS OF PEOPLE THAT HAVE PULLED
5 OUT OF THOSE THINGS AND DECIDED TO...

6 BY MR. HEWITT:

7 YEAH. AND, YOU KNOW, I'D WANT TO KNOW, YOU
8 KNOW, WHETHER MANY, ALL, OR MOST OF THOSE CASES WERE
9 BEFORE THE STATUTORY CHANGE THAT REQUIRED ALL
10 COMMISSION APPROVAL ---

11 BY THE COMMISSIONER:

12 WELL, I'M TALKING EVEN POST 2007.

13 BY MR. HEWITT:

14 --- OF ALL SETTLEMENT AGREEMENTS OR ---

15 BY THE COMMISSIONER:

16 BECAUSE, TO ME, WHEN PEOPLE SAY WE WANT TO PUT
17 IT ON THE RECORD, I KNOW THEY WANT TO DO THAT, BUT
18 IT'S KIND OF WINDOW DRESSING IN A WAY BECAUSE THE
19 CLAIMANT IS ALWAYS FREE TO CHANGE HIS OR HER MIND.

20 BY MR. HEWITT:

21 WELL, OF COURSE, THAT'S WHAT THE MACKEY CASE
22 SAYS, THE COURT OF APPEALS CASE FROM 1984. THAT'S
23 WHAT IT SAYS EXPRESSLY, THAT EVERYBODY CAN WALK OUT
24 OF THESE AGREEMENTS UNTIL THEY'VE BEEN FILED WITH THE
25 COMMISSION AND APPROVED.

1 BY THE COMMISSIONER:

2 BUT THIS ONE WASN'T FILED, WAS IT, MR. HEWITT?

3 BY MR. HEWITT:

4 WELL, THE MEDIATION AGREEMENT WAS NOT FILED WITH
5 THE COMMISSION. AND, OF COURSE, IT'S OUR POSITION
6 THAT THIS AGREEMENT GAVE THE CLAIMANT, BY EXTENSION
7 WHEN HE PASSED HIS NEXT OF KIN DEPENDENT OR THE
8 PERSONAL REPRESENTATIVE OF HIS ESTATE, THE RIGHT TO
9 HOLD THE EMPLOYER TO THE AGREEMENT THAT IT MADE,
10 BECAUSE THIS AGREEMENT HAS -- YOU KNOW, IT HAS --
11 IT'S INTENDED ---

12 BY THE COMMISSIONER:

13 FOR FUTURE MEDICAL?

14 BY MR. HEWITT:

15 I'M SORRY?

16 BY THE COMMISSIONER:

17 FOR FUTURE MEDICAL?

18 BY MR. HEWITT:

19 WELL, IT IS FOR FUTURE MEDICAL. BUT, YOU KNOW,
20 THAT SORT OF LEADS TO THE SECOND POINT I WANTED TO
21 MAKE WITH RESPECT TO MY BROTHER'S PRESENTATION. I
22 DID NOT MEAN TO IMPLY THAT THIS INCLUDED AN INDEMNITY
23 PORTION OF THE CLAIM. BUT LET'S CHANGE THE FACTS AND
24 SUPPOSE THAT IT DID. LET'S SUPPOSE INDEMNITY HADN'T
25 BEEN ADJUDICATED, AS IT WAS IN THIS CASE. LET'S

1 SUPPOSE THIS WAS A CLINCHER FOR INDEMNITY AS WELL AS
2 FUTURE MEDICAL AND IT WAS INDEMNITY FOR A TYPE OF
3 CLAIM THAT WOULD ABATE ON DEATH, 'CAUSE, YOU KNOW,
4 SOME INDEMNITY CLAIMS DO AND OTHER CLAIMS DON'T. HIS
5 ARGUMENT WOULD BE THE SAME. IT WOULD APPLY TO THAT
6 JUST AS WELL. SO I THINK SAYING THIS IS MEDICAL ONLY
7 IS ULTIMATELY NOT DETERMINATIVE.

8 BY THE COMMISSIONER:

9 I THINK HE WAS JUST TRYING TO MAKE SURE THE
10 RECORD WAS RIGHT.

11 BY MR. HEWITT:

12 OKAY. AND IT'S A FAIR POINT. I CERTAINLY
13 DIDN'T MEAN ---

14 BY THE COMMISSIONER:

15 NOT TO PUT WORDS IN HIS MOUTH, BUT I ASSUME HE
16 WAS JUST MAKING SURE THAT THE RECORD WAS CORRECT,
17 THAT THIS WAS FOR MEDICAL ONLY. AND YOU'RE JUST
18 SAYING IT DOESN'T REALLY MATTER?

19 BY MR. HEWITT:

20 IT DOESN'T MATTER. I MEAN, YOU KNOW, IF I WERE
21 IN HIS POSITION, I WOULD EMPHASIZE THAT IT WAS
22 MEDICAL ONLY BECAUSE IT MAKES IT LOOK BAD, YOU KNOW,
23 FOR ME. BUT THE PROBLEM IS, YOU KNOW, WE HAVE TO
24 DECIDE CASES BASED ON THE FACTS AS THEY COME BUT
25 APPLY A RULE OF LAW THAT, YOU KNOW, APPLIES ACROSS

1 THE BOARD.

2 BY THE COMMISSIONER:

3 SO YOU THINK I HAVE THE JURISDICTION TO
4 DISREGARD -- OR THE AUTHORITY -- NOT THE
5 JURISDICTION, BUT THE AUTHORITY AND THE DISCRETION TO
6 DISREGARD THE -- BECAUSE WE'RE NOT -- WE'RE A
7 STATUTORY ANIMAL, STATUTORY CREATION.

8 BY MR. HEWITT:

9 RIGHT.

10 BY THE COMMISSIONER:

11 DO I HAVE THE AUTHORITY AND THE DISCRETION TO
12 DISAVOW AND DISREGARD, DISCOUNT ANY OF THESE THINGS
13 THAT ARE ---

14 BY MR. HEWITT:

15 OH, OF COURSE NOT. I THINK WHAT OUR POSITION
16 IS, THAT WE'RE ASKING THE COMMISSION TO FOLLOW THE
17 STATUTE, AND TO DO THAT -- OR THE WAY TO DO THAT IS
18 TO HOLD THE EMPLOYER TO THE BARGAIN THAT THEY MADE.
19 SO, WE ASK THAT THE -- WE REQUEST THAT THE -- WE
20 THINK THE EMPLOYER SHOULD PREPARE THE AGREEMENT
21 RELEASE. THE AGREEMENT RELEASE SHOULD BE EXECUTED
22 AND FILED WITH THE COMMISSION, AND THEN THE CASE WILL
23 BE DONE. THAT'S FAIRLY SIMILAR TO THE CASES WE'VE --
24 THE PROCEDURE EMPLOYED IN CASES THAT WE CITED FROM
25 OTHER JURISDICTIONS, MANY OF WHICH REQUIRED

1 COMMISSION APPROVAL AFTER AN AGREEMENT HAS BEEN
2 FILED, AND THOSE COURTS SAY YOU STILL HAVE THE
3 COMMISSION APPROVAL PROCESS EVEN THOUGH THE CLAIMANT
4 DIED, BUT THE CLAIMANT'S UNEXPECTED DEATH IS NOT
5 GROUNDS FOR BACKING OUT OF THE AGREEMENT THAT YOU'VE
6 ENTERED INTO. IT'S NOT FRAUD. IT'S NOT MUTUAL
7 MISTAKE. IT'S NOT ANY ONE OF THE GROUNDS FOR
8 RECISION OF A CONTRACT. BECAUSE WHAT HAPPENS, AS WE
9 ALL KNOW, IS WHETHER IT'S A WORKERS' COMP SCENARIO OR
10 ANY OTHER LEGAL PROCEEDING, EVERYBODY AROUND THE
11 TABLE IS GAMBLING A LITTLE BIT. YOU KNOW, THE
12 EMPLOYER IS OFFERING A LUMP SUM BECAUSE THEY THINK
13 THAT WE CAN PAY A LITTLE BIT LESS THAN WE WOULD
14 OTHERWISE BE REQUIRED TO PAY IF WE HAD TO STAY ON THE
15 HOOK FOR A RUNNING AWARD, OR WHATEVER. AND THE
16 CLAIMANT'S GAMBLING THAT EITHER HE CAN BE A BETTER
17 MANAGER OF THE MONEY THAN THE EMPLOYER CAN, THAT HE
18 MIGHT -- OR MAYBE HE WON'T LIVE AS LONG AND HE CAN
19 ENJOY, YOU KNOW, THE MONEY IN THE SHORT TERM. SOME
20 OF THE CASES -- I WOULD DIRECT YOUR ATTENTION TO THE
21 FIFTH CIRCUIT CASE THAT WE CITED IN OUR LEGAL MEMO,
22 TALKS ABOUT ---

23 BY THE COMMISSIONER:

24 AND I WILL READ THOSE.

25 BY MR. HEWITT:

1 IT TALKS ABOUT HOW THE EMPLOYER HAS THE BENEFIT
2 OF LEGAL ADVISERS AND ACTUARIES AND HOW CLAIMANTS ARE
3 OFTEN AWED BY LARGE SUMS OF MONEY. IT SAYS EVERYBODY
4 AROUND THE TABLE IS GAMBLING. AND THE REASON WE
5 ENFORCE THESE AGREEMENTS IS BECAUSE EVERYBODY SIGNED
6 THEM, IT SEEMED LIKE A GOOD IDEA AT THE TIME, AND
7 THERE'S NO GROUNDS AT LAW TO ALLOW PEOPLE TO BACK OUT
8 OF WHAT IS OTHERWISE A BINDING AGREEMENT.

9 BY THE COMMISSIONER:

10 OKAY. MR. STIDHAM OR MS. SULLIVAN, DO YOU ALL
11 WANT TO ADD ANYTHING BEFORE I TURN TO MR. ADDISON?

12 BY MS. SULLIVAN:

13 NO, COMMISSIONER.

14 BY THE COMMISSIONER:

15 OKAY. THANK YOU. MR. ADDISON, DO YOU WISH TO
16 RESPOND? AND THEN WE'LL ---

17 BY MR. ADDISON:

18 I'M GOING TO HAVE TO CLARIFY ONE MORE THING.
19 AND I THINK I KNOW WHAT -- AND I'M GOING TO CALL HIM
20 BROTHER HEWITT SINCE HE CALLED ME HIS BROTHER -- WHAT
21 BROTHER HEWITT WAS REFERRING TO, BUT HE INDICATED
22 THAT THE AGREEMENT FOLLOWING MEDIATION DID NOT
23 REFERENCE THERE BEING ANY ADDITIONAL AGREEMENT, BUT I
24 THINK HE MEANT THAT THERE WASN'T GOING TO BE
25 ADDITIONAL DISCUSSIONS ABOUT SETTLEMENT. BUT THE

1 DOCUMENT ITSELF SPECIFICALLY STATES -- IT'S NUMBER
2 THREE IN THE DOCUMENT. IT'S PAGE 31 OF PLAINTIFF'S
3 APA, COMMISSIONER. THE NUMBER THREE IS SPECIFICALLY
4 INDICATING THE REQUIREMENTS OF THE STATUTE, THAT WE
5 WOULD -- THAT THE EMPLOYER SHALL PREPARE AN AGREEMENT
6 AND RELEASE, RELEASING ALL PARTIES AND ENTITIES FROM
7 ALL CLAIMS BY THE CLAIMANT WHICH WOULD BE SIGNED BY
8 THE CLAIMANT AND CLAIMANT'S ATTORNEY. IF THAT'S
9 WHAT'S REQUIRED UNDER THE STATUTE AND BEFORE THAT
10 COULD OCCUR THE CLAIMANT DIED, THEN PURSUANT TO THE
11 CASES THAT WE'VE CITED WE HAVE A RIGHT TO BACK OUT.
12 I MEAN, THE SOUTH CAROLINA COURTS HAVE REVIEWED THIS
13 AND SAID SOMEBODY CAN BACK OUT OF AN AGREEMENT BEFORE
14 IT'S FINALIZED. ONCE IT'S DONE, IT'S DONE, AND IT'S
15 BINDING, AND NOBODY CAN BACK OUT. BUT UNTIL THOSE
16 EVENTS OCCUR, EITHER PARTY CAN BACK OUT.

17 **BY THE COMMISSIONER:**

18 OKAY. ANYTHING ELSE? ALL RIGHT. THAT WILL
19 CONCLUDE THIS PROCEEDING. AND I WILL HOPEFULLY --
20 YOU ALL WILL HAVE SOMETHING FROM ME BY MONDAY, I
21 HOPE. I'LL DO THIS OVER THE WEEKEND AND GET IT
22 FINALIZED. YOU ALL HAVE A GOOD REST OF THE DAY.

23 **(THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS**
24 **CONCLUDED AT THE HOUR OF 11:21 A.M.)**

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1116698

Gus King,)
)
Claimant,)
)
v.)
)
Pierside Boatworks,)
)
Employer,)
)
and)
)
PA Manufacturers,)
)
Carrier.)
-----)

FULL COMMISSION HEARING

Monday, December 17, 2018
1:50 p.m. - 2:21 p.m.

The Full Commission Hearing was heard before Commissioners Michael Campbell, Gene McCaskill, and Melody James at the South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, South Carolina, on the 17th day of December, 2018 before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(No Exhibits were marked at this hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COMMISSIONER CAMPBELL: Amber, you can go ahead.

COURT REPORTER: Okay. Today is Monday, December 17th, 2018. This is South Carolina Workers' Compensation Case 1116698. This case -- this is the case of Gus King versus Pierside Boatworks, employer and PA Manufactures, the carrier. And first Appel- -- the Appellant is the de- -- well, there's two.

COMMISSIONER CAMPBELL: The Appellant's represented by Blake, Blake Hewitt.

COURT REPORTER: Yeah. Okay. Yeah, that's right. Mr. Christmas isn't here. By Blake A. Hewitt and the Respondent is represented by Daniel Addison. Each side is allowed 10 minutes for oral argument and the Appellant 3 minutes in reply. You are requested to argue the grounds of exception and stay within the record.

COMMISSIONER CAMPBELL: Okay. Mr. Hewitt?

APPELLANT'S ARGUMENT:

MR. HEWITT: Thank you Mr. Chairman. May it please the Commission. My name is Blake Hewitt and I represent two people. The first is Laura King and she is the deceased Claimant's next-of-kin and she's also the beneficiary of his estate.

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1 The second person I represent is a gentleman
2 named Bob Horne. He is the PR, the Personal
3 Representative, of the deceased Claimant's
4 estate. The motion to intervene is on his
5 behalf and I'll discuss that in just a moment.
6 The deceased Claimant is represented by Gary
7 Christmas and his law firm. And his client and
8 mine are aligned in interest, so we filed a
9 joint brief and I'll be arguing today on behalf
10 of all of us. This appeal is about our attempt
11 to enforce a written agreement to settle this
12 case. The agreement was signed at the
13 conclusion of a successful mediation and then
14 the Claimant died seven days after the
15 mediation in an unrelated car wreck. There are
16 two issues in front of you today. The first is
17 whether the estate should be allowed to
18 intervene in this case and become a party to
19 the dispute. That issue is the low-hanging
20 fruit. The second is the legal question
21 whether this agreement to settle the case is
22 enforceable. On the estate's participation, we
23 think there's frankly no good reason not to
24 allow the estate to participate and that's
25 because, as I said a few moments ago, Laura

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1 King is both the beneficiary of the deceased
2 Claimant's estate -- excuse me, the beneficiary
3 of the deceased Claimant and the beneficiary of
4 his estate. So, all roads lead to her. The
5 estate's intervention is more about dotting the
6 I's and crossing the T's. Making sure all of
7 the right parties have participated as a formal
8 matter in the event that the agreement to
9 settle the case reached after mediation is
10 enforceable. The reason we think the written
11 agreement to settle this case is enforceable,
12 is because that's the reason we don't end
13 mediation with a handshake. The reason we sign
14 the agreements at the conclusion of a
15 successful mediation is so the parties can
16 enforce the bargain. Now the result in this
17 case is uncomfortable because this mediation
18 agreement concerned the payment of money for
19 future medical care -- a clincher not an
20 indemnity award. And I get that. I get that
21 it might make the Commission uncomfortable. It
22 makes me uncomfortable. But what makes me more
23 uncomfortable is where we end up if we buy the
24 argument on the other side which is that these
25 agreements, which have been signed by the



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1 parties and signed by their counsel are not
2 enforceable. You know, parties go to the
3 negotiating table because they want to trade
4 the uncertainty of litigation for finality.
5 And everybody was sitting around the mediation
6 table. It seemed like a good idea at the time.
7 Everybody signed on the dotted line. And
8 nobody benefits from a rule that says you can
9 just renege any time and change your mind.
10 This would be a binding agreement in any other
11 forum. It would be binding in Circuit Court.
12 It would be binding if you walked into a car
13 dealership and signed an agreement to purchase
14 a vehicle. It'd be binding in the business
15 world. There is no legitimate reason, to my
16 mind, for this to be something less than a
17 binding agreement.

18 **COMMISSIONER JAMES:** What are you binding in Family
19 Court? Those agreements are subject to
20 approval, aren't they?

21 **MR. HEWITT:** Certain Family Court agreements, I
22 think, are subject to approval. Particularly
23 ones involving children. I'm not sure whether
24 a property distribution agreement that was
25 executed, but that complies with Rule 43(K),



1 would not be binding. So, I think my one-word
2 answer would be, maybe it would, maybe it
3 wouldn't.

4 **COMMISSIONER JAMES:** Okay. But there are some
5 situations where Family Court, and then
6 previously under, under our old regulations ---

7 **MR. HEWITT:** That's right.

8 **COMMISSIONER JAMES:** --- where it was required.

9 **MR. HEWITT:** That's right.

10 **COMMISSIONER JAMES:** But there's also -- let, let's
11 say this happens. Let's say your clients --
12 it's, it's not approved and your client wants
13 to pull out, the Claimant wants to pull out.
14 So, can they -- you're saying they wouldn't be
15 able to pull out if they had signed this
16 mediation agreement, even though it wasn't
17 filed.

18 **MR. HEWITT:** Yeah, I -- I think that's exactly what
19 I'm saying. And that's one of the reasons that
20 I just find the contrary result unpalatable.
21 Because we always have to think about the next
22 case. Now, I recognize that the circumstances
23 in this case, the result of following the rule,
24 I advocate may give you some discomfort.
25 Again, it gives me some discomfort. We always



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1 have to ---

2 **COMMISSIONER JAMES:** But, that's why I'm asking for
3 a global ---

4 **MR. HEWITT:** --- yeah. We always have to think
5 about the next case because in the next case
6 the shoe might be on the other foot. And, of
7 course, if we were in Circuit Court or any
8 other, you know, mediation and an agreement was
9 reached between -- and put into writing and ex-
10 -- and executed by the parties and their
11 lawyers and then the Plaintiff decided -- you
12 know, left the mediation room and something
13 happened that strengthened his hand and he
14 said, I want out, you know. It would be the
15 same circumstance. And the court would
16 absolutely enforce that agreement, as it
17 should. So, I completely agree. If the
18 Claimant -- if the shoe was on the other foot
19 and something happened after the mediation and
20 the Claimant felt like his claim got better and
21 his case was strengthened, I think the employer
22 absolutely would have the right to say, no,
23 that's not a reason to back out of a binding
24 contract.

25 **COMMISSIONER JAMES:** The approval process ---



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1 MR. HEWITT: Doesn't exist -- oh, I'm sorry.

2 COMMISSIONER JAMES: --- well, actually, in order to
3 make a -- an order, otherwise if we didn't --
4 if the filing didn't make it an order and not
5 just an agreement then we wouldn't have
6 enforceability in -- from the get go. Somebody
7 would have to come in later, be- -- before we
8 would have contempt powers. So, the filing --
9 the filing itself is what makes it -- is what
10 makes it an order. So, I guess essentially
11 what you're asking us to do is to, to make
12 them, make them sign and file it.

13 MR. HEWITT: That's right. What we're asking for is
14 not an order that says this written agreement
15 is a clincher. It's obviously not. It's
16 missing two things that a clincher has to have
17 and you might say that those things are rather
18 trivial. It's the date of the injury and a
19 description of -- statement of the facts at
20 issue. But what we're seeking is an order from
21 the Commission of compelling of the carrier to
22 follow, to follow the statute and the
23 agreement. And the, the approval process, as
24 you noted, I think sort of directly in your
25 questioning and in the premise behind it, has



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1 changed. There is no approval process for this
2 particular type of case anymore because ---

3 **COMMISSIONER JAMES:** Because it's auto- ---

4 **MR. HEWITT:** --- both parties are represented ---

5 **COMMISSIONER JAMES:** --- it's an automated approval
6 process.

7 **MR. HEWITT:** Right, right. But ---

8 **COMMISSIONER JAMES:** It's the filing it.

9 **MR. HEWITT:** But filing it -- filing it makes it an
10 order. And we recognize we're not to that step
11 yet. What we're seeking is an order that gets
12 this case to that step -- to that step because
13 a circumstance that I think that might be
14 unpalatable is -- for everyone is, well what if
15 the Claimant had died 14 days after -- of this
16 -- this execution of this mediation agreement
17 and the clincher had been delivered and signed
18 by everybody but hadn't yet been filed with the
19 Commission, you know. Is that a meaningful
20 difference? And, to my mind, it isn't. But,
21 I think it strikes you as first blush much
22 further down the road and maybe a stronger case
23 for enforceability than here. But, again, you
24 know, there's no meaningful difference between
25 those situations.



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1 **COMMISSIONER JAMES:** But your argument would be if
2 somebody had signed something and, and you
3 were, you were holding it -- you were holding
4 it in trust or the defense attorney was holding
5 it in trust then they can't stop it from
6 getting filed. That final step that makes it
7 crude and an order of the Commission that you
8 couldn't say, give me back that -- give me back
9 that, I no -- I, I no longer wan- -- I no
10 longer want to be a part of that document.

11 **MR. HEWITT:** I think I agree that that's what I'm
12 saying.

13 **COMMISSIONER JAMES:** Yeah.

14 **MR. HEWITT:** But there's...

15 **COMMISSIONER JAMES:** So a Claimant that changes
16 their mind -- I'm just putting the shoe ---

17 **MR. HEWITT:** Yeah.

18 **COMMISSIONER JAMES:** --- on the other foot.

19 **MR. HEWITT:** Yeah.

20 **COMMISSIONER JAMES:** The Claimant that changes their
21 mind, and let's say, Mr. Addison has that
22 document. You say you have that document in
23 trust. We no longer want that filed. We don't
24 wanna go forward with, with the agreement.
25 Then, then that Claimant would have to go



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1 forward with the agreement and you're under the
2 theory of the Claimant in this case.

3 **MR. HEWITT:** Yes. And I think that would happen in
4 Circuit Court, in civil cases, that would
5 happen -- I mean, if you could conceptualize it
6 just as a standard breach of contract
7 situation. The, the reason I find my brother's
8 position unpalatable and untenable is because,
9 thinking about the case, just from the
10 perspective of, what's the legal rule. What
11 legal basis do we have to treat this written
12 agreement that would be a written and
13 enforceable contract; offer, acceptance,
14 consideration in -- can I just finish that
15 sentence?

16 **COMMISSIONER CAMPBELL:** We're gonna give you some
17 more -- add additional time since you've been
18 answering some questions. So, we'll give you
19 a couple extra minutes.

20 **MR. HEWITT:** Okay. Thank you, Mr. Chairman. What's
21 the legal basis for saying we're not gonna
22 apply basic conce- -- contract principles to
23 this anymore? Because, what happens then, if
24 you've got a fully executed clincher that's,
25 you know, still in the lawyer's outgoing



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1 mailbox, it hadn't been mailed to the
2 Commission yet. I mean, do we treat that
3 differently because of the mailbox rule or, you
4 know, because of some different, you know, as
5 yet undiscussed legal principle? I mean the
6 legal principle that I think has to control is
7 that the unexpected death of a Claimant would
8 not be grounds of common law to resen- -- to
9 rescind a contract. It's not fraud. Futural
10 -- future -- mutual mistake or any of the other
11 common law grounds to defeat a contract. We
12 have to treat this agreement as, as what it is,
13 which is a binding contract. Because the
14 contrary rule is that it's just not worth
15 anything. And to my mind, that, as a legal
16 proposition, is untenable. We ask that you
17 would grant the motion to intervene, because
18 there's really no good reason not to. It
19 doesn't affect who may ultimately take the
20 money in the unlikely event the agreement is
21 adjudicated to be enforceable. And we ask that
22 you follow the legal analysis articulated in
23 our brief and hold that this mediation
24 agreement is a binding contract and
25 enforceable. Thank you.

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1. **COMMISSIONER CAMPBELL:** Okay, thank you. And you'll
2. have three minutes of reply. And Mr. Addison,
3. I will -- if you care for it, I -- I'll
4. allocate a couple extra minutes for you, if you
5. need it.

6. **MR. ADDISON:** I'm fine.

7. **COMMISSIONER CAMPBELL:** Okay.

8. **MR. ADDISON:** I think we'll be fine. I think we'll
9. be fine.

10. **COMMISSIONER JAMES:** Depends on how many questions
11. we have.

12. **RESPONDENT'S ARGUMENT:**

13. **MR. ADDISON:** Yeah. And I apologize for the froggy
14. voice. I've been fighting a cold all weekend.
15. May it please the Commission. I am Dan Addison
16. here on behalf of the Defendants, PMA and
17. Pierside Boatworks. Commissioners, this, to
18. some degree, is a first-blush case. And I say
19. some degree because there are -- there're
20. aspects of this claim and the issues that are
21. before y'all as a Commission today have all
22. been tried by others and have gone to higher
23. courts in South Carolina with answers on pieces
24. and parts. To some degree we kind of have a
25. Chinese menu here of several different issues



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1 coming together at the top of the pyramid with
2 one primary issue of whether this an
3 enforceable agreement between these two
4 parties. The Claimant's position -- I agree
5 it's, it's difficult from both sides of this to
6 sit here and look at this and say, how does one
7 do this as a, as a Commissioner. How, how do
8 we sit here and make a decision on what we're
9 supposed to do in the circumstance. But, the
10 simple fact is, is that Workers' Comp law isn't
11 common law. That is the main factor that y'all
12 have to keep in mind. Y'all are bound by the
13 statute. And what the statute says your powers
14 are and what you can and can't do. And we're
15 bound on our side as defendants and plaintiffs
16 as to what the statute says we are entitled to
17 or not entitled to. In this particular case,
18 the Claimant's indemnity had been paid in full.
19 Not one dime of the indemnity was left. I
20 think that if we were talking about indemnity,
21 there's -- there would be different statements
22 coming from both sides, if this was an issue
23 about indemnity. It's not. It's only about
24 the future medical rights that existed as of
25 the time that the mediation ---

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1 COMMISSIONER JAMES: Well, let's talk about the
2 filing process first ---

3 MR. ADDISON: Okay.

4 COMMISSIONER JAMES: --- then, Mr. Addison. The --
5 would you agree with me that the process for
6 the filing, as it was changed in 2007, was a
7 shortcut to the approval and to make ---

8 MR. ADDISON: Oh, absolutely. Completely, totally,
9 it's changed the way the statute indicates that
10 we're supposed to file a document. What ---

11 COMMISSIONER JAMES: So that's what takes it from
12 being ---

13 MR. ADDISON: Well ---

14 COMMISSIONER JAMES: --- where we make it
15 enforceable, is that, that signature that used
16 to be, and the filing.

17 MR. ADDISON: But, here's the problem with the case
18 at hand, is there was -- it was impossible to
19 obtain the Claimant's signature, which is part
20 of the requirement of the new statute, is to
21 have the agreement signed by the parties
22 involved and have that then submitted to the
23 Commission for approval.

24 COMMISSIONER JAMES: And that part of it might be
25 administer- -- that part of it might be



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1 administerial. I don't -- you know ---

2 **MR. ADDISON:** I, I did claim that ---

3 **COMMISSIONER JAMES:** --- we have defendants that end
4 up ---

5 **MR. ADDISON:** But that's a new claim ---

6 **COMMISSIONER JAMES:** --- and then they sign.

7 **MR. ADDISON:** --- a defendant's claim is a new
8 claim. That's not the same claim as the, as
9 the decendent's claim. That's why the
10 decendent's name in this case, Mr. -- he had no
11 claim the minute he died. He's gone. He's
12 done. There's no claim to anything, any
13 further, abated at that moment. So, the ---

14 **COMMISSIONER JAMES:** His comp- -- his compensation
15 abated, but if there was some other --
16 something else out there. If there was an
17 unpaid medical bill ---

18 **MR. ADDISON:** An unpaid med- ---

19 **COMMISSIONER JAMES:** --- that was a mistake ---

20 **MR. ADDISON:** --- unpaid medical but not ---

21 **COMMISSIONER JAMES:** --- unpaid medical bill ---

22 **MR. ADDISON:** --- but not future medical. And this
23 was all 100 percent future medical that we were
24 settling based on the life care plans that had
25 been submitted and the discussions that were



1 had at the time of the mediation.

2 **COMMISSIONER JAMES:** So, I know I'm been around.

3 But, if it was an unpaid medical bill ---

4 **MR. ADDISON:** Uh huh.

5 **COMMISSIONER JAMES:** --- and hi- -- then his estate
6 perhaps would possibly have standing to come in
7 because ---

8 **MR. ADDISON:** Not his estate. The provider would
9 have a claim against us through the, through
10 the Commission to get it paid.

11 **COMMISSIONER JAMES:** Well, let's talk abo- -- let's
12 talk about something a little bit different
13 because, under your theory, the estate never
14 has, never has ---

15 **MR. ADDISON:** And that's clear black-letter law in
16 South Carolina though, the estate has no
17 standing in a Workers' Comp matter in South
18 Carolina. The courts have already ruled on
19 that issue. That an estate can't be a claimant
20 within a ---

21 **COMMISSIONER JAMES:** That's in the, that's in the
22 compensabil- -- that's in the compens- --
23 compensation round.

24 **MR. ADDISON:** Yes.

25 **COMMISSIONER JAMES:** We have a -- we have statutes



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1 that say whether you're next of kin ---

2 **MR. ADDISON:** Correct.

3 **COMMISSIONER JAMES:** --- or whether -- depending on
4 whether the death's related or not.

5 **MR. ADDISON:** Correct.

6 **COMMISSIONER JAMES:** And let's say it's an un -- an
7 unrelated death and the person dies before
8 their comp claim has been litigated ---

9 **MR. ADDISON:** Uh huh.

10 **COMMISSIONER JAMES:** --- and they have no next of
11 kin dependent, okay, and then they have a lot
12 of unpaid medical bills. If there's somebody
13 that can't come in and litigate the underlying
14 claim with that, then the estate would get
15 stuck with medical bills.

16 **MR. ADDISON:** No they wouldn't. Because the statute
17 very clearly states that if it's workers' comp
18 matter that's a related workers' comp matter
19 that the provider cannot bill the Claimant,
20 period.

21 **COMMISSIONER JAMES:** But the scenario that I just
22 gave you, it had not been determined to be work
23 related, yet.

24 **MR. ADDISON:** Okay. So, there's no ruling ---

25 **COMMISSIONER JAMES:** And so you don't have of kin to



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1 come in to, to litigate it.

2 **MR. ADDISON:** There's no ruling that it's a
3 compensable claim at that point.

4 **COMMISSIONER JAMES:** Right. And so, let's say
5 there's a severe injury with a lot of medical
6 bills. So in, in your scenario there, the
7 estate would get stuck with all his medical
8 bills ---

9 **MR. ADDISON:** I don't think they do. I don't think
10 they can.

11 **COMMISSIONER JAMES:** Well then, how would -- who
12 would litigate it?

13 **MR. ADDISON:** Because how's the estate gonna be
14 stuck with it? The provider comes in and says
15 ---

16 **COMMISSIONER JAMES:** The provider comes against the
17 ---

18 **MR. ADDISON:** You have to ---

19 **COMMISSIONER JAMES:** --- person ---

20 **MR. ADDISON:** --- you have to sue us to keep us from
21 having -- or you have to sue -- I'm trying to
22 think through the scenario.

23 **COMMISSIONER JAMES:** --- they would file, they would
24 file against the estate.

25 **MR. ADDISON:** The provider would come in and say,



1 estate, you owe us for this medical.

2 **COMMISSIONER JAMES:** Right.

3 **MR. ADDISON:** The estate would say, no, that's a
4 Workers' Comp matter, we're not paying it.

5 **COMMISSIONER JAMES:** So that's ---

6 **MR. ADDISON:** And then the provider would have to
7 sue the estate which would then, potentially,
8 the Circuit Court would send it back to y'all
9 and say, is this compensable or not under the
10 workers' comp matter.

11 **COMMISSIONER JAMES:** Which would mean that the
12 estate was ---

13 **MR. ADDISON:** I don't think it means the estate, I
14 think it means that the decedent's claim, prior
15 to his death -- what was the Claimant's rights
16 prior to the event of his death are being
17 litigated. And it's just, it's cobbled through
18 the estate but the estate cannot be a party.
19 I mean, the Supreme Court's made that very
20 clear in its rulings. And it's not one ruling,
21 it's several rulings on the issue of whether an
22 estate can be a party.

23 **COMMISSIONER JAMES:** That, that's on the compensation
24 issues. But anyway, North Carolina has a --
25 has, has addressed this.



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1 MR. ADDISON: That, that's correct. But we have, we
2 have addressed it opposite here. Our Supreme
3 Court's made it abundantly clear the estate
4 can't be a party.

5 COMMISSIONER JAMES: And, maybe it's just something
6 that we need to look at for legal matters. I
7 don't want to take up time on that ---

8 MR. ADDISON: What, and, and I think ---

9 COMMISSIONER JAMES: --- because it's along the same
10 lines ---

11 MR. ADDISON: Right.

12 COMMISSIONER JAMES: --- that the argument ---

13 MR. ADDISON: And, and that's, that's why I said
14 earl- ---

15 COMMISSIONER JAMES: So, let's look, let's look at
16 the other -- but the -- there is some -- there
17 is some law in other states with regards to
18 issues that have to do -- not with the
19 compensation, but with the unaccrued benefits.
20 In fact, even Larson's at 8-2-09 says, the
21 accrued but unpaid installments are, of course,
22 an asset of the estate like any other debt.

23 MR. ADDISON: Completely ---

24 COMMISSIONER JAMES: So ---

25 MR. ADDISON: --- but, that's not a, that's not a



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1 play here because there's no unaccrued
2 anything.

3 **COMMISSIONER JAMES:** I understand that, but there
4 are some scenarios, which I'm trying to
5 envision, where an estate could be a party.

6 **MR. ADDISON:** Yes, ma'am. And there's states that
7 say the exact opposite. We went through
8 Larson's and went through all 50 states,
9 literally, with this particular case to try to
10 see where everybody lies and it's both ways.
11 And it's almost evenly split. And it's, you
12 know, it's, it's not a settled answer anywhere
13 in the country that I can tell you. That I --
14 that's why I say, I think that if it was
15 indemnity owed, this would be a whole different
16 argument that we'd be having today. But,
17 because it was future medical only that was
18 being settled. It, a little bit laser focuses
19 on what the issues are, which is, was this an
20 enforceable agreement or not. And, because the
21 Claimant never was able to sign the clincher --
22 I actually sent the clincher to Gary, but the
23 Claimant died before it being signed. Gary
24 then tried to submit the, the mediation
25 agreement to the Commission. And said, we want



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1 this approved. And y'all rejected it and said,
2 no, it's not in the format that it has to be
3 in, it's not proper as a document to be
4 submitted for approval. And, of course, I then
5 -- my client then said, no, we're, you know,
6 we're rescinding the offer. It's over. The
7 Claimant's dead, we won't owe any future
8 medical. Those facts are not in dispute, I
9 don't think, from either side, as to what a, a
10 -- I don't even know what occurred prior to
11 this event of the mediation agreement being
12 rescinded and going away from our end. Then
13 the question becomes, is that an enforceable
14 agreement? And the only way it's enforceable
15 is if it follows the format of the statute.
16 Y'all are creatures of statute. And the
17 statute says it has to be in a particular
18 manner, which we have pointed out at the single
19 Commissioner and now pointing out to you
20 through the brief, it wasn't done that way.
21 And y'all don't have the authority to come in
22 and make the mediation agreement. Per how I
23 briefed it in my brief, you do not have the
24 authority, as a full Commission, to try to turn
25 the mediation agreement into something that

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1 would be considered to be a clincher of these
2 issues. I just don't think that the statutory
3 authority exists for that. The only other way
4 for it to occur is through contract law like
5 the Plaintiff is arguing. And contract law
6 does not apply here. This is a statutory
7 creature. The Court has very clearly stated
8 that the contract law should not be applied in
9 a Workers' Comp matter, for any reason. It's
10 whatever the statute says, it's what the APA
11 says, and it is what the workers' comp statute
12 says that gives y'all the authority to do
13 whatever y'all do as Commissioners. I
14 understand there are other pertinent things
15 that come outside of that, like your question
16 about family court, but that's only where
17 there's a specific carve out within the
18 workers' comp statute or the APA that says
19 these other courts have to be involved.

20 **COMMISSIONER JAMES:** Well, that's the family courts
21 and that can be analogous to -- similar to what
22 we do. You can have a contract and, unless
23 it's approved, the, the contract, the contract
24 doesn't go anywhere.

25 **MR. ADDISON:** But family court is not a statutory



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1 court, it's a common law court.

2 **COMMISSIONER JAMES:** I know. But, is it -- what I'm
3 saying is analogous to what we do. I was using
4 it as an example.

5 **MR. ADDISON:** Right.

6 **COMMISSIONER JAMES:** We have approval by regulation.
7 We have an approval process to streamline now
8 and I was on the Commission when the change was
9 made ---

10 **MR. ADDISON:** Right.

11 **COMMISSIONER JAMES:** --- but, of course, was
12 practicing, that it's -- that the signature of
13 the Commissioner was taken out of the mix in
14 order to get ---

15 **MR. ADDISON:** More streamlined.

16 **COMMISSIONER JAMES:** Yes.

17 **MR. ADDISON:** Oh, I, I agree.

18 **COMMISSIONER JAMES:** --- approved and made an order.

19 **MR. ADDISON:** Correct. But, that did not happen
20 here. That's -- so the only way for that to
21 happen is that if y'all then step in and
22 intervene and say we're going to adopt the
23 mediation agreement as the actual settlement
24 document and we're going to settle the case
25 based on that loose terms. My position is, is



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1 that -- and my client's position is, is that
2 that mediation agreement can't be that. Y'all
3 can't step in and say this.

4 **COMMISSIONER CAMPBELL:** You have extra time.

5 **MR. ADDISON:** Y'all also can't, you know -- I
6 briefed it, I can go through it if you want me
7 to, but I briefed the issue of whether or not
8 the Commission can essentially step in and take
9 my rights away and say, no, y'all can't
10 rescind; you have to abide by this mediation
11 agreement. I don't think y'all have the
12 statutory power to do so. I'm not telling
13 y'all what you can and can't do. I'm just
14 saying that the statute is what governs, and
15 y'all are creatures of statute. And the
16 statute is very clear on this issue of how it
17 had to transpire and it didn't happen. The
18 Claimant died, he, he died while we were in, in
19 process. And my client made a decision to
20 rescind, as was their right. And it goes the
21 other way. Just like you were asking,
22 Commissioner Beck, you know, if the Claimant
23 decided to withdraw, could he withdraw?
24 Absolutely. That right exists -- that has been
25 litigated and the Court has very clearly



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1 stated, until the final order's stamped, either
2 side can say, I'm out, I don't wanna do this,
3 I'd rather just go to court.

4 **COMMISSIONER MCCASKILL:** We've been down this long
5 and winding road. Get my elderly mind back
6 where, where I think, in fact I know, but I
7 just want you to affirm for me, all this is
8 about future medical?

9 **MR. ADDISON:** Yes, sir. That was what was settled.
10 That -- this is a ---

11 **COMMISSIONER MCCASKILL:** And indemnity had been taken
12 care of ahead of time.

13 **MR. ADDISON:** Indemnity had already been paid.. We
14 actually had ---

15 **COMMISSIONER MCCASKILL:** That's ---

16 **MR. ADDISON:** --- -- we had a hearing, he was found
17 perm total. We actually, as I stated earlier,
18 there was offer, it's in the record, there was
19 a written offer of settlement on perm total
20 basis to the Claimant well before we got to a
21 hearing. The hearing was primarily about the
22 indemnity and then kind of dealing with all of
23 his medical stuff because he, he had extensive
24 medicals. This was one of the most horrific
25 injuries I've ever dealt with as a, as a



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1 defense attorney, on a surviving claimant.

2 **COMMISSIONER MCCASKILL:** But the indemnity's in the
3 rearview, all this was about future medical?

4 **MR. ADDISON:** Future meds, yes, sir.

5 **COMMISSIONER JAMES:** And, Mr. Addison, if he -- if
6 it's signed and filed and he passed away two
7 days later or seven days later, then it would,
8 it would've been enforceable at that point?

9 **MR. ADDISON:** Absolutely. Because we would've done
10 what we would've done to have a settled claim
11 at that point. You know, we would've filed the
12 documents to the Commission and, you know --
13 but that step didn't occur. It's just like --
14 well, I won't be -- I won't say that. I was
15 going to say it'd be like, you know, if I
16 didn't have that date, I wouldn't have had a
17 baby, or something like ---

18 **COMMISSIONER JAMES:** And if you didn't have -- and
19 if you client didn't want to pay it, somebody
20 had to enforce it, who would be the proper
21 party to come in and enforce that?

22 **MR. ADDISON:** Say that one more time, I'm sorry.

23 **COMMISSIONER JAMES:** If that had happened -- that it
24 had been filed, and your client says, I'm not
25 paying -- who would've been a, a proper party



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1 to come in to ---

2 **MR. ADDISON:** I think the dependent. I think the
3 dependent becomes the proper -- if there's any
4 benefits to be paid pursuant to -- if you look
5 at the statute on any benefits that have been
6 ---

7 **COMMISSIONER JAMES:** But the statute on the
8 dependent only addresses compensation, so would
9 it not be a ---

10 **MR. ADDISON:** No. It's anything that's owed.
11 Anything owed to any kind of agreement as well,
12 I believe is what the statute says. It's
13 anything that's under the system that would be
14 owed pursuant to any enforceable aspect of the
15 statute.

16 **COMMISSIONER JAMES:** But I'm talking about part --
17 I'm talking about part. Where would that money
18 be paid into? Like unequivocally, since it's
19 not a compensation, would it not be paid to the
20 estate?

21 **MR. ADDISON:** I think you would have -- not to the
22 estate, it'd have to go to the named dependent.
23 He had a wife. Now we had no w- -- we had no
24 hearing on who the proper dependent would have
25 been. But the monies would've been paid



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1 through a dependency hearing as per a ruling of
2 the Commission as to who the proper dependents
3 are. Quite frankly, there's a possibility the
4 secondary fund would've been involved with
5 this, had we gotten to that route. Over some
6 other issues, but, you know, there would've
7 been a named dependent that my client's
8 would've been required -- or dependents that my
9 client would've been required to pay benefits
10 to. Not benefits, but these monies, these
11 proceeds would have to go to somebody pursuant
12 to the way the statute tells us that we have to
13 pay whatever is owed, pursuant to the workers'
14 comp system. If there was an enforceable
15 agreement in place, at the time of the
16 Claimant's death, that I was entitled -- I was
17 required to pay the Claimant's side this large
18 sum of money, I think it goes to the
19 dependents. If they have a claim to it. But,
20 you know, that was the risk everybody took on
21 this, was whether or not he would sign the
22 documents.

23 **COMMISSIONER JAMES:** Okay.

24 **MR. ADDISON:** Okay.

25 **COMMISSIONER CAMPBELL:** All right, thank you. Mr.



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1 Hewitt?

2 **APPELLANT'S REPLY:**

3 **MR. HEWITT:** Thank you, Mr. Chairman. Three brief
4 points, but I want to stop my thing to answer
5 any questions you have. First of which is that
6 I don't know where this is coming from, the
7 Supreme Court has said no, estate never be a
8 part of Workers' Comp. Commissioner James, I
9 think both of your examples are good examples
10 of when an estate would end up in a workers'
11 comp litigation. Another example was the
12 scenario present in the Hudson case, *Hudson*
13 *versus Lancaster Convalescent*. That case
14 involved a Claimant who died after getting a
15 lump sum order and this Commission actually
16 approved a settlement agreement between the
17 statutory beneficiaries and the deceased
18 Claimant's estate because there, as here,
19 because there was a pro- -- something you could
20 hang your hat on and say, this is sort of no
21 longer comp. A lump sum has already been
22 ordered, so there's a vested right to that
23 here. It's -- there's a settlement agreement
24 that arguably gives the estates rights in it.
25 There is the potential that that money goes to



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1 the beneficiaries, or the estate, and this
2 Commission approved the settlement agreement
3 between the deceased Claimant's estate and the
4 statutory beneficiary. So, that's point one.
5 I don't know where this is ---

6 **COMMISSIONER JAMES:** Well, four- -- 42-9-2(A) says,
7 payment of unpaid balance of compensation when
8 the employee dies. So, the -- it appears to me
9 these address compensation and according to --
10 if I'm looking at Larson's that approve estate,
11 or my example of how within the state, in a
12 case that had not been adjudicated with no next
13 of kin dependent, if it was not a death claim.

14 **MR. HEWITT:** Right.

15 **COMMISSIONER JAMES:** But how, how would -- who --
16 somebody has to be able to come in.

17 **MR. HEWITT:** Yeah. And that -- I mean, I think it's
18 got to be the estate.

19 **COMMISSIONER JAMES:** Well, it would be whoever would
20 be entitled to the money. So, that at -- as
21 part of the standing.

22 **MR. HEWITT:** Exactly.

23 **COMMISSIONER JAMES:** --- possibly. So, I think
24 there's a North Carolina case that's -- the
25 Estates of Apple Apple versus Commercial



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1 *Courier Express* that addresses, that addresses
2 the issue standing.

3 **MR. HEWITT:** I haven't, I haven't read -- I haven't
4 read that case, but I'll certainly take your
5 word for it. And ---

6 **COMMISSIONER JAMES:** Well, in that case they didn't
7 let the estate have standing because there was,
8 there was really nothing to enforce over
9 medical.

10 **MR. HEWITT:** Right. And, of course, our argument --
11 although this settlement agreement involved
12 payment of money for the discharge of the
13 obligation to provide ongoing medical, you
14 know, really what they were paying for was
15 certainty. I'll pay you a million dollars and
16 then this case, no matter what else comes up in
17 the future, goes away. And the Claimant was
18 betting that he could either be a better
19 steward of that money than the employer could
20 be of his medical care or maybe that he
21 wouldn't live as long as the employer thought
22 he was gonna live. Everybody around the table
23 was gambling, that's why negotiated settlements
24 work, you know. The employer thinks they're
25 making a good bet; the Claimant thinks they're



1 making a good bet. What happened here is that,
2 within a weeks time, the employer turned out to
3 have made -- I'm sorry, I just ---

4 **COMMISSIONER CAMPBELL:** Yeah. And I, I know you
5 said you had three points that you wanted to
6 make, I believe, when you first got up. So, if
7 you need to -- if you ---

8 **MR. HEWITT:** I can do it in 20 seconds.

9 **COMMISSIONER CAMPBELL:** All right. You can have 20,
10 I just want to let you know you have time.

11 **MR. HEWITT:** Okay.

12 **COMMISSIONER CAMPBELL:** Okay?

13 **MR. HEWITT:** Well, thank you.

14 **COMMISSIONER CAMPBELL:** But briefly.

15 **MR. HEWITT:** And yes, everybody around the table was
16 gambling and that's what negotiated agreements
17 are. And what just happened is, in a weeks
18 time, it proved the employer made a bad bet.
19 But, making a bad bet is not grounds to get out
20 of what would otherwise be a binding agreement.
21 Second point is, I understood my brother to say
22 if we were talking about indemnity, that would
23 be a little bit different. I don't know how,
24 just viewing the case, as a matter of law of
25 how we could honestly treat an award with a mix



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1 between indemnity and medical, or just
2 indemnity, any different. What's the principle
3 of law in which you distinguish those things?
4 And finally, my brother says there's no basis
5 for the Commission to, to compel it to follow
6 the statute. The Commission does that all the
7 time and the Supreme Court's decision in
8 *Crawford versus Town of Winnsboro* says, that
9 when the Commission was created as a quasi-
10 judicial authority, it has all the power
11 necessary to give effect to its judicial
12 authority. That's all we're asking you to do.
13 Hope everybody has a good holiday. Thank you.

14 **COMMISSIONER CAMPBELL:** Thank you, folks. That's
15 concludes today's proceeding.

16 **(There being nothing further, the full commission**
17 **hearing concluded at 2:21 p.m.)**
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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1116698

Gus Allen King,
Claimant,
vs.
Pierside Boatworks,
Employer,
and
PMA Insurance,
Carrier, Defendants

Order and Award

HEARING:

Held in Charleston, South Carolina, on
February 6, 2014

APPEARANCES:

Claimant was represented at the hearing by
Gary Christmas, Esquire, of Howell &
Christmas, LLC, Mount Pleasant, South
Carolina.

Defendants were represented by R. Dannel
Addison, Esquire, of Columbia, South
Carolina.

PURPOSE OF HEARING:

To determine issues set forth on Forms 50
and 51.

DECISION & ORDER:

Melody L. James, Commissioner

ORDER FILED:

May 20, 2014.

STATEMENT OF THE CASE

This matter is before the Commissioner pursuant to Claimant's Form 50 and defendants' Form 51. Claimant contends that he is permanently and totally disabled pursuant to S.C. Code Ann. S.C. Code Ann. §42-9-10 and/or §42-9-30 (21) for fifty percent or more loss of use of the back as a result of injuries he sustained to his cervical spine, right shoulder (aggravated arthritis), right upper extremity, left upper extremity, thoracic spine, lumbar spine (including muscle spasms and the injury to his spine at L5-S1, L4-L5 and L3-L4), bilateral lumbar radiculopathy, sacrum, bursitis, pelvis (including nerve injuries and crush injuries), pelvic bones, ilium bones, pubic symphysis, umbilical hernia, right hip, right lower extremity, left hip, left lower extremity, left knee, left foot, left ankle, left heel, left heel spur, bottom of left foot (including plantar fascial fibromatosis), arthropathy, erectile dysfunction, chest (wheezing in chest), bacterial pneumonia, headaches, trachea (tracheostomy), lungs, heart (including blood clots in his heart), respiratory failure, left internal artery, right superior gluteal artery, abdomen, large abdominal midland scar with deformation of the abdominal wall, severe constipation (due to narcotic bowel syndrome and post-operative changes after severe pelvic injury requiring surgical treatment with colonoscopy and ileo conduit), gastrointestinal tract injury, gastrointestinal system (including the stomach, small intestines and the large intestines), gastrointestinal tract injury with open wound into cavity, partial obstruction of bowels, scrotum, anus, rectum, perineum, urethra (including urethra injury with open wound into cavity), skin loss (where colostomy bag placement is implanted), bladder, pancreas, stomach, spleen, liver, prostate, gallbladder, kidneys, aggravated diabetes, aggravated arthritis, anxiety, depression and insomnia arising out of and in the course and scope of his employment when he was working on a large forklift when the engine engaged and ran over Claimant's body. Claimant contends that he is entitled to a higher average weekly

wage and compensation rate than was calculated by defendants and that he is entitled to the difference between his correct and incorrect compensation rates for all of the periods that compensation has been paid to date. Claimant contends that he is entitled to all causally related past and future medical care and treatment and that said future medical care and treatment should be paid for Claimant's lifetime pursuant to §42-15-60 and/or *Dodge vs. Bruccoli, Clark, Layman, Inc.*, 334 SC 574, 514 SE2d 593 (Ct. App. 1999). Finally, Claimant contends that Claimant and Claimant's attorney are entitled to a lump sum payment of the Award and that Claimant is entitled to have *James vs. Anne's* 390 S.C. 188, 701 S.E.2d 730 and *Utica Mohawk Mills vs. Orr*, 227 SC 226, 87 SE 2d. 593, Social Security Disability offset language included in the Order of his case.

Defendants admit that Claimant suffered injuries in his work-related accident but do not admit to all of Claimant's injuries as listed out in Claimant's Form 58. Defendants take the position that their Form 20 represents the correct average weekly wage and compensation rate which presents an average weekly wage of \$663.10, with a compensation rate of \$442.09, and deny the higher average weekly wage and compensation rate argued by Claimant. Defendants also deny that Claimant is entitled to the difference between his correct and incorrect compensation rates for all the periods that compensation has been paid to Claimant. Defendants admit that Claimant is permanently and totally disabled. Finally, defendants admit that Claimant and Claimant's attorney are entitled to a lump sum payment of the Award and that Claimant is entitled to have *James vs. Anne's* 390 S.C. 188, 701 S.E.2d 730 and *Utica Mohawk Mills vs. Orr*, 227 SC 226, 87 SE 2d. 593, Social Security Disability offset language included in the Order of his case.

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. Notices were timely and properly served upon all the parties of interest.
2. Venue, set in Charleston County, is proper as agreed by all parties.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declarations or unstipulated medical.

APA SUBMISSIONS AND EXHIBITS

Both parties, by and through their respective counsel, provided the Submissions required by Regulation 67-612. The Submissions were entered into evidence pursuant to the Administrative Procedures Act and received without objections. The APA Submissions are as follows:

On Behalf of Claimant:

<u>APA</u>	<u>NOTICE OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u># OF PAGES</u>
1	Picture of the Actual Forklift that Ran Claimant Over in His Work-Related Accident	Undated	Pictures ()
2	Pictures of Claimant's Injuries from His Work-Related Accident	Undated	Pictures ()
3	Joel Leonard Vocational Evaluation and Curriculum Vitae	9/30/13	13 (6-18)
4	Diagnostic Medical Reports	3/8/13 - 11/18/11	117 (19-134)
5	Authorized Treating Physician, Dr. Neven Hadzizahic, Medical Records and Opinions and Curriculum Vitae	7/16/13 - 11/5/12	19 (135-153)

6	Authorized Treating Physician, Dr. Langdon Hartsock, Medical Records and Opinions and Curriculum Vitae	4/16/13 - 1/31/12	31 (154-184)
7	Authorized Treating Physician, Dr. Theodore Pappas, Medical Records and Opinions and Curriculum Vitae	8/29/13 - 6/10/08	174 (185-358)
8	Authorized Treating Physician, Dr. Bruce A. Crookes, Medical Opinions	3/14/13	2 (359-360)
9	Authorized Treating Physician, Dr. Stuart Leon Medical Records and Opinions	7/23/13 - 8/29/12	2 (361-362)
10	Medical University of South Carolina Medical Records	3/18/12 - 11/18/11	81 (363-443)
11	Carolinas Hospital System Medical Records	1/7/12	23 (444-466)
12	Roper St. Francis Medical Records	10/1/12 - 9/10/12	32 (467-498)
13	Personal Care Physical Therapy Medical Records	5/15/12	22 (498-519)

EXHIBITS

14	Statement of Daniel Addison Re: Gus King Vs. Pierside Boatworks Dated May 25, 2013, Wherein He and Claimant's Attorney at the Time, Fred Reisen, "Agreed upon the Commuted Value plus Continuing Medicals for Life Whenever His Client Was Prepared to Accept His Officer"	3/25/13	2 (520-521)
15	Claimant's Letter to Defendants Dated June 17, 2013, Requesting a Higher Average Weekly Wage and Compensation Rate Pursuant to Like or Similar Employees Records Provided by Defendants	6/17/13	4 (522-525)

16	Claimant's Letters to Defendants Dated June 19, 2013, July 1, 2013, and August 13, 2013, Requesting That Defendants File An Amended Form 51 - Employer's Answer to Request for Hearing, Specifically Indicating Which Body Parts Employer/Carrier Is Accepting	8/13/13 - 6/19/13	6 (526-531)
17	S.C. Workers' Compensation First Report of Injury	11/18/11	1 (532)

On Behalf of Defendants:

1	Claimant's 2010, Income Tax Return	2010	5
2	Claimant's 2011, Income Tax Return	2011	6

CLAIMANT'S BIOGRAPHICAL

AGE: Claimant is fifty-four (54) years of age.

SEX: Male

EDUCATION: Claimant dropped out of high school at the 11th grade and later obtained a General Equivalency Diploma.

EMPLOYMENT HISTORY: Claimant began working at the age of fifteen (15) as a boat repairer and dock worker which is the only type of work he has ever performed.

EVIDENCE OF THE CASE

The record includes the testimony of Claimant, Gus Allen King. Further, Claimant's attorney submitted medical records and evidence through APA Submissions and Claimant's attorney and defendants submitted Exhibits.

Testimony of Claimant, Gus Allen King:

Claimant was sworn and testified that he has no write ups for dishonesty with this employer or any other employer. He testified that he started working when he was fifteen (15)

years of age as a boat repairer and dock worker and that same is the only kind of work that he has ever performed. He testified that he dropped out of high school at the eleventh (11th) grade and that he later obtained his General Equivalency Diploma.

Claimant testified that on the day of his work-related accident he was working on a forklift that was bought by employer. He testified that he bumped the engine and that the engine cranked up in reverse and caught his left leg in the front tire causing his right leg to be pinned against the metal stump. He testified that his pinned right leg caused his left leg to rotate which then caused the metal stump to rip him from right above his rectum all the way to his upper butt cheeks. He testified that he was let loose from the forklift and that his coworkers called an ambulance for him. Claimant testified that the copy of the Form 58, shown to him, which lists his injured body parts and medical conditions, are a complete list of his injuries from his work accident, to include his cervical spine, right shoulder (aggravated arthritis), right upper extremity, left upper extremity, thoracic spine, lumbar spine (including muscle spasms and the injury to his spine at L5-S1, L4-L5 and L3-L4), bilateral lumbar radiculopathy, sacrum, bursitis, pelvis (including nerve injuries and crush injuries), pelvic bones, ilium bones, pubic symphysis, umbilical hernia, right hip, right lower extremity, left hip, left lower extremity, left knee, left foot, left ankle, left heel, left heel spur, bottom of left foot (including plantar fascial fibromatosis), arthropathy, erectile dysfunction, chest (wheezing in chest), bacterial pneumonia, headaches, trachea (tracheostomy), lungs, heart (including blood clots in his heart), respiratory failure, left internal artery, right superior gluteal artery, abdomen, large abdominal midland scar with deformation of the abdominal wall, severe constipation (due to narcotic bowel syndrome and post-operative changes after severe pelvic injury requiring surgical treatment with colostomy and ileo conduit), gastrointestinal tract injury, gastrointestinal system (including the stomach,

small intestines and the large intestines), gastrointestinal tract injury with open wound into cavity, partial obstruction of bowels, scrotum, anus, rectum, perineum, urethra (including urethra injury with open wound into cavity), skin loss (where colonoscopy bag placement is implanted), bladder, pancreas, stomach, spleen, liver, prostate, gallbladder, kidneys, aggravated diabetes, aggravated arthritis, anxiety, depression and insomnia. He testified that the scar from his accident goes from the middle of his chest and down all the way to his pubis area.

Claimant testified that he has to live with the injuries that he sustained from his work-accident on a daily basis. He testified that he was in and out of trauma surgery for four (4) consecutive days post his accident and because of that, was not able to be sewn up properly and therefore, anytime he wears any kind of pants that require a belt or a button said area is constantly ripped open and steadily bleeds. He testified that the irritation and bleeding from constant rubbing requires him to wear soft types of clothing and that even at this time, with a Kotex pad on same, which was put on right before he got to this Hearing, there is already blood that has drained onto said pad. Claimant testified that he has not been able to return to work since his November 18, 2011, accident at work.

Claimant testified that it was his understanding that he was hired by employer at \$20.00, per hour for a period of ninety (90) days and that at the end of said ninety (90) days, he would have an evaluation which would then carry his wages to \$25.00, per hour and that at the end of the year his wages would increase to \$27.50 per hour. He testified that at the time of his accident at work that he was still in the probationary period but that if he would have made it past the probationary period that he would have been paid \$25.00, per hour for forty (40) hours per week which would equate to around \$1,000.00, per week. Upon review of Claimant's actual payroll records, he testified that the pay period of October 10, 2011, through October 23, 2011, wherein

he earned \$1,379.00, that the period of October 24, 2011, through November 6, 2011, wherein he earned \$1,273.40, and that the period of November 7, 2011, through November 20, 2011, wherein he earned \$1,431.60, equate to year to date amount of \$4,084.00, which accurately reflects his earnings with employer.

Claimant testified that the six (6) weeks that he worked for employer does not accurately reflect what he would have been earning over the whole year if he had worked for employer for the full year because he would have earned more money due to the approaching transit season. He testified that the amount of work that he performs and the amount of hours that he works a week for employer depend on the seasons of the year and that October and November, when he was hired by employer and when the accident occurred, are not a part of the busy season for boating. He testified that if he had worked the full fifty-two (52) weeks prior to his accident at work that his number of hours worked would have gone up significantly. Claimant testified that in general, for his line of work, that usually starting around October and November transit boats, which move from North to South, will usually travel the Intracoastal Waterway due to bad weather. He testified that it is not uncommon for these transit boats to hit debris or other objects and cause damage to running gear and damage to the bottom of the vessel. He testified that same causes workloads to pick up. He testified that when the Spring comes and when the Billfish and Dolphin start making their migration run from the South to the North is when all of the big tournaments begin. He testified that same is when all of the big sport fishers start hauling out to get all of their work done so that when the tournaments begin they are ready to fish. He testified that the boats used for charters require boats in tip top shape so that when the charters begin, they are ready. He testified that during the Spring and months of preparation that the work load goes up and he can work from eighty (80) hours a week and up. He testified that some boatyards

obtain Winter projects by way of working on boats for customers who have large vessels that need to be re-built which requires the engines to be pulled out and to completely re-build the boat from the inside out.

Claimant testified that he has been compliant and has obtained all of the medical care and treatment that has been offered to him by his authorized treating physicians, including Dr. Neven Hadziahic, Dr. Langdon Hartsock, Dr. Theodore Pappas, Dr. Bruce Crookes and Dr. Stuart Leon.

Claimant testified that he does not remember if he received anymore paychecks after his date of accident on November 18, 2011, because he was at the hospital and placed into an induced coma. He said that his wife said that she did not receive any payments until he was woke up in January of 2012, when the workers' compensation carrier paid his back due temporary total disability benefits in the sum of a little over \$3,000.00. Claimant testified that employer paid him for three (3) days after his accident at work because there was a paycheck presented to him after same. Claimant testified that employer required him to punch in and punch out of work by way of a time clock. He testified that his actual start date with employer was October 10, 2011, and that he worked until he was injured in November of 2011. He testified that he did not work for the three (3) days post his November 18, 2011, accident at work and was not aware if his employer had paid him for the days on November 18th, 19th and 20th, after his accident at work. Upon closer review of his actual payroll records, Claimant testified that he did not see any accounting of how many hours he worked for each individual day. He testified that defendants represented that employer had paid him for eight (8) hours for the three (3) days post his work accident but that he has no personal knowledge or evidence that shows that he was paid for eight (8) hours on those three (3) days.

Claimant testified that prior to working for employer that he worked for City Boat Yard as a Mechanical Technician and/or Marine Technician. He testified that pursuant to his 2010, tax records, that he earned \$29,170, for that year and that pursuant to his 2011, tax records that he earned \$29,564.00, for that year. He testified that for the two (2) years prior to working for employer, that he was earning less than he was earning while working for his work-accident employer because he took time off from work to work for private customers. He testified that said private customers would pay him anywhere from \$60.00, to \$70.00, per hour which is a lot more than what the boatyards would pay him. Claimant testified that he did not obtain in writing from employer that his pay would increase from \$20.00, per hour to \$25.00, per hour after the probationary period but that same was a gentleman's agreement between them.

Claimant testified that there was no medical recommended to him that he did not obtain and that he does not recall anytime where he did not want to stay in the hospital or obtain treatment from the infectious disease doctor. He testified that he does not recall being informed by his former attorney, Fred Riesen, that defendants were threatening to cut off his benefits due to him not obtaining treatment from his treating doctors because one of the only times he spoke with Attorney Riesen was when he signed paperwork for him at the hospital. He testified that one of the only other times he spoke with anyone at Attorney Riesen's office was when he spoke to his paralegal and that conversations between him and Attorney Riesen were communicated through his paralegal.

Claimant testified that he is on medication at the current time and that he is constantly on medication twenty-four/seven (24/7). He testified that some of the side effects of his medications include memory lapse and at times causes him to be unable to comprehend what people are saying to him which requires people to repeat what they said so that he may

understand. He testified that he is answering the questions presented to him by his attorney and defendants to the best of his ability.

REVIEW OF MEDICAL EVIDENCE

A review of the medical evidence reveals that Claimant underwent a total of fifteen (15) surgeries as a result of his November 18, 2011, accident at work. He underwent Surgery 1 on November 18, 2011, for opened open book pelvic fracture consisting of wound exploration, ligation of bleeding vessels and packing; underwent Surgery 2 on November 18, 2011, for bladder injury and pelvic trauma consisting of bilateral ureterostomy; underwent Surgery 3 on November 18, 2011, for pelvic trauma with hemorrhagic shock consisting of placement of left subclavian cordis catheter; underwent Surgery 4 on November 18, 2011, for perineal trauma, bladder disruption and rectal injury consisting of exploratory laparotomy, Hartmann's procedure and diversion of bilateral ureters; underwent Surgery 5 on November 20, 2011, for respiratory failure, acute blood loss anemia, pelvic fracture, rectal injury and bladder injury consisting of Sigmoid colectomy, ligation of hemorrhoidal artery, ligation of bulbospongiosus bleeding source and ligation of the vesical plexus; underwent Surgery 6 on November 21, 2011, for major severe open pelvic fracture status post exploratory laparotomy and packing of large perineal wound consisting of closed reduction and application of anterior pelvic external fixator; underwent Surgery 7 on November 21, 2011, for poly trauma with severe pelvic fracture consisting of insertion of right femoral cordis catheter, pelvic venogram, inferior venacavagram and placement of inferior venacaval interruption device bard eclipse IVC filter; underwent Surgery 8 on November 22, 2011, for pelvic fracture, perineal injury, severe bladder injury, rectal injury, history acute blood loss, massive bladder injury with ureterostomy for damage control procedure consisting of mobilization of the ureter from the left side to the right side and

ileal loop conduit and cystectomy; underwent Surgery 9 on November 22, 2011, for open pelvis fracture consisting of removal of external fixator from anterior pelvis and open reduction internal fixation pubis symphysis; underwent Surgery 10 on November 22, 2011, for open abdomen and rectal injury consisting of abdominal reexploration, removal of pelvic packs x5, washout, mobilization of splenic flexure, distal sigmoid colectomy and colostomy and primary fascial closure; underwent Surgery 11 on November 28, 2011, for complex pelvis fracture consisting of attempted open reduction internal fixation of posterior pelvic ring; underwent Surgery 12 on November 28, 2011, for distal rectal injury with disrupted anal sphincters and pelvic floor consisting of total proctectomy and sigmoidectomy via a perineal approach and excision of devascularized urethra and corpus spongiosum; underwent Surgery 13 on November 29, 2011, for respiratory failure and penetrating pelvic trauma resulting in multiple pelvic fractures, bladder injury, and rectal injury requiring a proctosigmoid colectomy with end colostomy, cystectomy, and ileal conduit consisting of percutaneous tracheostomy tube placement; underwent Surgery 14 on November 29, 2011, consisting of percutaneous tracheostomy tube placement; and underwent Surgery 15 on November 30, 2011, for perineal wound communicating to the pelvic cavity consisting of complex closure of pelvic floor and the perineal wound with placement of a wound VAC (APA #4).

Claimant underwent a vocational evaluation by Joel Leonard, Certified Rehabilitation Counselor and Certified Vocational Evaluation Specialist, of Leonard & Associates, Inc., on September 24, 2013. He opines on September 30, 2013, that "[b]ased upon [Claimant's] vocational evaluation, to include my analysis and consideration of the functional evidence, it is my professional opinion that [Claimant] is currently incapable of gainful work activity and is totally disabled in an outright manner. It is also my opinion that such circumstances are

correlated to the injury at work that occurred at work on November 18, 2011, simply put [Claimant] retains an overall, vocational profile that falls well below the expected standards of competitive employment." He further opines that "[b]ased on the results of [Claimant's] vocational evaluation, it is my professional opinion that [Claimant] is totally disabled in an outright manner and that such findings are correlated to the workplace injury that occurred on November 18, 2011. Simply put, [Claimant] retains an overall vocational profile defined by a catastrophic designation that falls well below the expected and customary requirements of competitive employment" (APA #3).

A review of the medical evidence reveals that Claimant treated with authorized treating physician, Dr. Neven Hadzizahic, from July 16, 2013, through November 5, 2012. Dr. Hadzizahic opines on July 16, 2013, that most probably and to a reasonable degree of medical certainty (1) Claimant will not be able to return to his prior occupation and will not be able to return to any kind of gainful employment as a result of the injuries he sustained at work on November 18, 2011; (2) Claimant sustained the following permanent impairment as a result of his November 18, 2011, accident at work as follows: 100% permanent impairment with regard to his urethra; an additional 100% permanent impairment with regard to his bladder; an additional 100% permanent impairment with regard to his perineum; an additional 100% permanent impairment with regard to his anus; an additional 100% permanent impairment with regard to his rectum; an additional 100% permanent impairment with regard to the skin loss where his colostomy bag is implanted; an additional 80% permanent impairment with regard to his large intestines; an additional 60% permanent impairment with regard to his Gastrointestinal System; an additional 50% permanent impairment with regard to his abdomen; an additional 30% permanent impairment with regard to his stomach; an additional 20% with regard to his partial

obstruction of bowels; and an additional 20% permanent impairment with regard to his small intestines; (3) Claimant's injuries including severe constipation (due to narcotic bowel syndrome and post-operative changes after severe pelvic injury requiring surgical treatment with colostomy and ileo conduit), urethra, skin loss where colostomy bag is implanted, abdomen, bladder, partial obstruction of bowels, gastrointestinal system to include the stomach, large intestines and small intestines, rectum, anus, perineum and depression and anxiety were caused by and/or were aggravated by his November 18, 2011, accident at work; (4) Claimant will require lifetime future medical care and treatment as a result of his November 18, 2011, accident at work which will 'tend to lessen his period of disability' including but not limited to follow up office visits, medications including but not limited to laxatives and Relistor, injections and periodic colon screening; (5) with regard to Claimant's November 18, 2011, accident at work, that he has been a compliant patient, shows no signs of malingering and that his pain and injuries are real and permanent. On November 5, 2012, Claimant was evaluated by Dr. Hadzijahic upon referral by authorized treating physician, Dr. Theodore Pappas. Claimant was diagnosed with severe constipation likely due to narcotic bowel syndrome and postoperative changes in the abdomen in a fifty-two year old male patient with a history of severe pelvic injury requiring colostomy and ileal conduit. Claimant was evaluated again on December 10, 2012, and was diagnosed with severe constipation likely due to narcotic bowel syndrome and postoperative changes in the abdomen in a fifty-two year old male patient with a history of severe pelvic injury requiring colostomy and ileal conduit (APA# 5).

A review of the medical evidence reveals that Claimant treated with authorized treating physician, Dr. Langdon Hartsock, from April 16, 2013, through January 31, 2012. Dr. Hartsock opines on April 16, 2013, that most probably and to a reasonable degree of medical certainty (1)

Claimant will not be able to return to his prior occupation and will not be able to return to any kind of gainful employment as a result of the injuries he sustained at work on November 18, 2011; (2) Claimant sustained the following permanent impairment as result of his November 18, 2011, accident at work as follows: 10% whole person permanent impairment with regard to his left ankle fracture; an additional 30% permanent impairment to his left lower extremity for nerve damage; an additional 30% permanent impairment to his right lower extremity for nerve damage, an additional 15% whole person permanent impairment with regard to his pelvis for his crush injuries; an additional 10% whole person permanent impairment to his pelvis for nerve injuries and sensory loss due to pelvic fractures and injuries; and an additional 30% whole person permanent impairment to his pelvis for loss of motor function to his lumbosacral nerve from his pelvic fracture; (3) that he only treated Claimant for his work-related muscular skeletal injuries and accordingly, he is only offering opinions regarding same, therefore, it is his opinion that the injuries to Claimant's cervical spine, right shoulder, right upper extremity, lumbar spine (including muscle spasms and the injuries to his spine at L5-S1, L4-L5 and L3-L4), sacrum, pelvis (including nerve injuries and crush injuries), pelvic bones, ilium bones, pubic symphysis, bilateral lumbar radiculopathy, right lower extremity, left lower extremity were caused by and/or were aggravated by his November 18, 2011, accident at work; (4) Claimant will require lifetime future medical care and treatment as a result of his November 18, 2011, accident at work which will 'tend to lessen his period of disability' including but not limited to follow up office visits, medications, pain management, periodic injections, physical therapy, orthotics and/or braces for his bilateral lower extremities and repeat diagnostic imaging; (5) Claimant will also require additional lifetime future medical care and treatment as a result of his November 18, 2011, accident at work which will 'tend to lessen his period of disability' because due to Claimant's

severe injuries that he sustained in his accident at work he will likely develop work-related arthritis in his left hip, right hip and left ankle that will likely lead to additional surgeries to include a total left hip replacement, total right hip replacement and left ankle surgery as a result of his November 18, 2011, accident at work. Dr. Hartsock evaluated and/or treated Claimant for injuries, including but not limited to his pelvic injuries, abdominal injuries, peroneal injuries, back injuries, lumbar radiculopathy, bilateral lower extremities, knee pain, bilateral ankle pain and bilateral foot pain (APA #6).

A review of the medical evidence reveals that Claimant treated with authorized treating physician, Dr. Theodore Pappas, from August 29, 2013, through May 24, 2004. Dr. Pappas, opines on August 29, 2013, that most probably and to a reasonable degree of medical certainty (1) Claimant will not be able to return to his prior occupation and will not be able to return to any kind of gainful employment as a result of the injuries he sustained at work on November 18, 2011; (2) Claimant's injuries to his cervical spine, right shoulder (aggravated arthritis), right upper extremity, lumbar spine (including muscle spasms and the injuries to his spine at L5-S1, L4-L5 and L3-L4), bilateral lumbar radiculopathy, right hip, right lower extremity, left hip, left lower extremity, left knee, left foot, left ankle, left heel, left heel spur, bottom of left foot to include plantar fascial fibromatosis, arthropathy, bursitis, sacrum, pelvis (including nerve injuries and crush injuries), pelvic bones, ilium bones, pubic symphysis, erectile dysfunction, umbilical hernia, scrotum, anus, perineum, rectum, urethra, abdomen, bladder, stomach, prostate, gallbladder, gastrointestinal tract injury, gastrointestinal system to include the small intestines and the large intestines, bacterial pneumonia, wheezing in chest, headaches, aggravated diabetes, anxiety, depression, insomnia and blood clots in his heart were caused by and/or were aggravated by his November 18, 2011, accident at work; (3) Claimant will require lifetime future medical

care and treatment to include medications of OxyCotin, Percocet, Lidoderm Patch, Lidoderm, Flexeril, Atenolol, Medrol, Fioricet, Amitriptyline, Diclofenac Sodium tablets, Oxycodone, Metformin HCl tablet, Juyen, Multivitamins, Seroquel, Erec Aid Esteem IKit, Relistor, Miralax, Nebulizer, Duo Neb, Amitriptyline HCl, Xanax, Penicillin, Boost, Diclofenac Sodium, Cefdinir Capsule, Lactulose Solution, Opana, Senokot, Cyclobenzaprine HCl, follow up office visits, pain management, injections, trigger point injections, steroid injections, physical therapy, electric sleep number bed, walker with a built in seat, lift chair, cane/walker, orthotics and/or braces for his bilateral lower extremities and repeat diagnostic imaging as a result of his November 18, 2011, accident at work which will 'tend to lessen his period of disability;' and (4) with regard to Claimant's November 18, 2011, accident at work, that Claimant has been a compliant patient, is not a malingerer, is credible and that his pain and injuries are real and permanent. Following Claimant's November 18, 2011, accident at work, Dr. Pappas evaluated and/or treated Claimant for injuries, including but not limited to his back, arthropathy, lumbar radiculopathy, ankle pain, migraines, right shoulder pain, bladder and urethra injury with open wound into cavity, left ankle, muscle spasm, insomnia, anxiety, asthma, gastrointestinal tract injury with open wound into cavity, constipation, plantar fascial fibromatosis, chronic pain due to trauma, erectile dysfunction, arthritis, contusion of multiple sites of shoulder and upper arm. Prior to Claimant's November 18, 2011, accident at work, Claimant was evaluated and/or treated by Dr. Pappas for injuries/conditions including but not limited to high blood pressure, lumbar spine, migraines, anxiety, arthritis, insomnia, hand, left knee, left wrist, left ankle, left heel, bursitis and left upper extremity (APA #7).

A review of the medical evidence reveals that Claimant was treated by authorized treating physician, Dr. Bruce A. Crookes. Dr. Crookes opines on March 13, 2013, that most

probably and to a reasonable degree of medical certainty (1) Claimant sustained a 50% permanent impairment to his rectum as a result of his November 18, 2011, accident at work; (2) Claimant's injuries to his rectum and perineum were caused by and/or were aggravated by his November 18, 2011, accident at work; (3) Claimant will require future medical care and treatment as a result of his November 18, 2011, accident at work which will 'tend to lessen his period of disability' to include follow up visits with his office, repeat diagnostic imaging, defecography, colostomy bags and stoma paste, chronic pain management, medications, physical therapy, injections and radio frequency ablation; and (4) Claimant cannot defecate and/or use the bathroom as a result of his November 18, 2011, accident at work (APA #8).

A review of the medical evidence reveals that Claimant was treated by authorized treating physician, Dr. Stuart Leon, on August 29, 2012. Dr. Leon opines on July 23, 2013, that that most probably and to a reasonable degree of medical certainty (1) Claimant will not be able to return to his prior occupation and will not be able to return to any kind of gainful employment as a result of the injuries he sustained at work on November 18, 2011; and (2) Claimant's injuries to his lungs, abdomen, heart, left internal artery, right superior gluteal artery and respiratory failure were caused by and/or aggravated by his November 18, 2011, accident at work (APA#9).

A review of the medical evidence reveals that Claimant treated with the Medical University of South Carolina from March 18, 2012, through November 18, 2011. Claimant was admitted to the Medical University of South Carolina on November 18, 2011, the date of his work-related accident and was discharged on December 12, 2011. By Hospital Discharge Summary dated December 12, 2011, Claimant's admitting diagnosis is massive pelvic trauma, and that he sustained the following injuries: (1) pelvic fractures status post anterior fixation by Orthopaedics; (2) bladder trauma status post cystectomy and ileal conduit by urology; (3) rectal

injury status post end colostomy and removal of rectum; (4) pelvic wound status post complex closure and VAC placement; (5) respiratory failure status post tracheostomy; (6) left ankle fracture status post fixation; and (7) left MCL tear status post hinged knee brace treatment. Claimant was discharged home with the following medications (1) Opana; (2) Oral Dilaudid; (3) Seroquel; and (4) Atenolol (APA #10).

A review of the medical evidence reveals that Claimant was evaluated by Carolinas Hospital System on January 7, 2012. Claimant was diagnosed with pneumoperitoneum with suspect perforated ulcer from the stomach with possible surgery to the stomach and ruptured viscus. Claimant also complained of lumbar spine pain. Claimant was transferred to the Medical University of South Carolina with prescribed medications of Dilaudid and Zofran (APA #11).

A review of the records reveals that Claimant was treated by Roper St. Francis Hospital from October 1, 2012, through September 10, 2012. Claimant was evaluated for back pain and gastrointestinal injury. Claimant was diagnosed with (1) lumbar degenerative disc disease; (2) lumbar disc displacement; (3) lumbosacral spondylosis; (4) lumbosacral neuritis; (5) arthropathy; and (6) fracture of dorsal vertebra (APA #12).

A review of the records reveals that Claimant was treated by Personal Care Physical Therapy from July 16, 2012, through May 15, 2012 (APA #13). Claimant was referred to physical therapy by authorized treating physician, Dr. Theodore Pappas. Claimant's chief complaints were pelvic fracture, left ankle, other abdominal injuries secondary to work trauma resulting in decreased endurance, strength and function. Diagnoses included muscle wasting and disuse atrophy, stiffness of joint ankle/foot and abnormality of gait (APA #13).

REVIEW OF EXHIBITS

A review of exhibits reveals that Claimant submitted 1) Statement of Daniel Addison Re: Gus King Vs. Pierside Boatworks Dated May 25, 2013, Wherein He and Claimant's Attorney at the Time, Fred Reisen, "Agreed upon the Commuted Value plus Continuing Medicals for Life Whenever His Client Was Prepared to Accept His Offer; 2) Claimant's Letter to Defendants Dated June 17, 2013, Requesting a Higher Average Weekly Wage and Compensation Rate Pursuant to Like or Similar Employees Records Provided by Defendants; 3) Claimant's Letters to Defendants Dated June 19, 2013, July 1, 2013, and August 13, 2013, Requesting That Defendants File An Amended Form 51 - Employer's Answer to Request for Hearing, Specifically Indicating Which Body Parts Employer/Carrier Is Accepting; and 4) S.C. Workers' Compensation First Report of Injury. A review of exhibits reveals that defendants submitted 1) Claimant's 2010, Income Tax Return; and (2) Claimant's 2011, Income Tax Return.

FINDINGS OF FACT

Based upon the greater weight of the evidence, including the testimony of the witnesses, the medical reports, restrictions and other documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission file relative to this claim, and the credibility of all the evidence and testimony submitted, this Commissioner therefore makes the following findings of fact:

1. That Claimant, Gus Allen King, and employer, Pierside Boatworks, were subject to the South Carolina Workers' Compensation Act, at the time of the accidental injury.
2. That the relationship of employer/employee existed between Claimant, Gus Allen King, and employer, Pierside Boatworks, at the time of Claimant's injury.

3. That Claimant timely notified employer of the accidental injury within the time period prescribed by statute.

4. That I find that Claimant sustained a compensable injury by accident arising out of and in the course and scope of employment, with Employer, Pierside Boatworks, with injuries to his cervical spine, lumbar spine, pelvis (including nerve injuries and crush injuries), pelvic bones, right shoulder (aggravated arthritis), right upper extremity, left upper extremity, bilateral lumbar radiculopathy, sacrum bursitis, ilium bones, pubic symphysis, umbilical hernia, right hip, right lower extremity, left hip, left lower extremity, left knee, left foot, left ankle, left heel, left heel spur, bottom of left foot (including plantar fascial fibromatosis), arthropathy, erectile dysfunction, chest (wheezing in chest), bacterial pneumonia, headaches, trachea, lungs, heart (including blood clots in his heart), left internal artery, right superior gluteal artery, respiratory failure, abdomen, large abdominal midland scar with deformation of the abdominal wall, severe constipation (due to narcotic bowel syndrome and post-operative changes after severe pelvic injury requiring surgical treatment with colostomy and ileo conduit), gastrointestinal tract injury, gastrointestinal system (including the stomach, small intestines and large intestines), partial obstruction of bowels, scrotum, anus, rectum, perineum, urethra (including urethra injury with open wound into cavity), skin loss (including where colostomy bag placement is implanted), stomach, prostate, gallbladder, aggravated diabetes, anxiety, depression and insomnia, when he was in a work-related accident on or about November 18, 2011. Furthermore, I find that Claimant sustained an aggravation of pre-existing arthritis in his right shoulder as a result of his accident at work on or about November 18, 2011 (Authorized Treating Physician, Dr. Neven

Hadzjahic, APA# 5; Authorized Treating Physician, Dr. Langdon Hartsock, APA #6; Authorized Treating Physician, Dr. Theodore Pappas, APA #7; Authorized Treating Physician, Dr. Bruce A. Crookes, APA #8; and Authorized Treating Physician, Dr. Stuart Leon, APA #9).

5. That I find that Claimant did not suffer injury or have a causal relationship established with regard to his thoracic spine, pancreas, spleen, liver or kidneys.

6. That I find that as a result of Claimant's accident at work on or about November 18, 2011, Claimant is totally and permanently disabled pursuant to S.C. Code Ann. §42-9-10, and that he has suffered permanent and total wage loss as a result of his myriad work-related injuries, and therefore, is permanently and totally disabled as of his Hearing date on February 6, 2014.

7. That Claimant's authorized treating physician, Dr. Neven Hadzjahic, authorized treating physician, Dr. Langdon Hartsock, authorized treating physician, Dr. Theodore Pappas, and authorized treating physician, Dr. Stuart Leon, all are of the opinion that Claimant is not able to return to any kind of gainful employment (APA #5, APA #6, APA #7, and APA #9). Furthermore, Claimant's authorized treating physicians have provided numerous and significant impairment ratings with regard to a multitude of injuries that Claimant sustained as a result of his accident at work on or about November 18, 2011. Furthermore, I find that the uncontroverted vocational evidence in this case, as provided by Vocational Expert, Joel Leonard, Certified Rehabilitation Counselor and Certified Vocational Evaluation Specialist, to be very persuasive in that said evidence concludes that "[b]ased upon [Claimant's] vocational evaluation, to include my analysis and consideration of the functional evidence, it is my professional that [Claimant] is currently

incapable of gainful work activity and is totally disabled in an outright manner. It is also my opinion that such circumstances are correlated to the injury at work that occurred at work on November 18, 2011, simply put [Claimant] retains an overall vocational profile that falls well below the expected standards of competitive employment." He further opines that "[b]ased on the results of [Claimant's] vocational evaluation, it is my professional opinion that [Claimant] is totally disabled in an outright manner and that such findings are correlated to the workplace injury that occurred on November 18, 2011. Simply put, [Claimant] retains an overall vocational profile defined by a catastrophic designation that falls well below the expected and customary requirements of competitive employment" (APA #3).

8. That Claimant's average weekly wage is \$727.28, with a corresponding rate of \$484.85. That I base Claimant's average weekly wage and corresponding compensation rate on the "Like or Similar Employee Form 20, Provided by Defendants" in which the defendants reported a like or similar employee's gross pay as being \$37,256.56 for the reported 52 week period. Given that Claimant had only worked for approximately six (6) weeks prior to his work accident and did not have sufficient history of wage earnings with this employer on which to fairly calculate and/or base Claimant's average weekly wage and compensation rate and given that Claimant was employed for less than fifty-two weeks, pursuant to S.C. Code Ann. §42-1-40 ("Average weekly wages" defined), I find that using the like or similar employee Form 20 provided by defendants in this case to be fair to both of the parties in determining Claimant's average weekly wage and compensation rate. While defendants submitted Claimant's previous tax returns for several years prior his work-accident, said returns do not include the wages, fees or

income that Claimant made outside of his regular employment. Furthermore, given that defendants failed to submit any wage records from Claimant's prior employment and given that defendants failed to bring any witness to testify as to Claimant's past wages with prior employers and/or wages with his accident employer, Claimant's prior hourly wages are unknown. Given the above, I find that using the Like or Similar Employee Form 20, provided by defendants in this case, is fair to both of the parties.

9. That the Award provided to Claimant in this Order shall be paid by defendants at the compensation rate of \$484.85.

10. That Claimant is entitled to and defendants shall pay Claimant, the difference between the correct compensation rate of \$484.85, and the incorrect compensation rate paid by defendants in the amount of \$442.09 (a difference of \$42.76 per week) for any and all periods of temporary total disability paid to Claimant in this case.

11. That I find that as a result of Claimant's November 18, 2011, accident at work, Claimant is entitled to, and defendants shall pay for all past causally related medical care and treatment. Medical payments shall be made by defendants to the medical providers, or to the Claimant or his insurance carrier, or to Medicare/Medicaid, if those expenses have been paid by them.

12. That Claimant shall be entitled to, and defendants shall pay for Claimant's lifetime future causally related medical care and treatment pursuant to S.C. Code Ann. §42-9-10, and §42-15-60(C), including, but not limited to, office visits, medications including laxatives and Relistor, injections, periodic colon screening as opined by authorized treating physician, Dr. Neven Hadzizahic (APA #5, p. 135); medications including Oxycotin, Percocet, Lidoderm Patch, Lidoderm, Flexeril, Atenolol, Medrol, Fioricet,

Amitriptyline, Diclofenac Sodium tablets, Oxycodone, Metformin HCl tablet, Juven, Multiviatmins, Seroquel, Eree Aid Estem Kit, Relistor, Miralax, Nebulizer, Duo Neb, Amitriptyline HCl, Xanax, Penicillin, Boost, Diclofenac Sodium, Cefdinir Capsule, Lactulose Solution, Opana, Senokot, Cyclobenzaprine HCl, follow up office visits, pain management, injections, trigger point injections, steroid injections, physical therapy, electric sleep number bed, walker with built in seat, lift chair, cane/walker, orthotics and/or braces for Claimant's bilateral lower extremities and repeat diagnostic imaging as opined by authorized treating physician, Dr. Theodore Pappas (APA #7, p. 185); office visits, repeat diagnostic imaging, defecography, colostomy bags and stoma paste as opined by authorized treating physician, Dr. Bruce A. Crookes (APA #8, p. 359); office visits, medications, pain management, injections, physical therapy, orthotics, braces and diagnostic imaging as opined by Dr. Langdon Hartsock (APA #6, p. 155). Furthermore, I find that Claimant is also in need of bags and supplies for his ileostomy as it is clear that Claimant still has two separate stomas (openings) in his body as a result of his work-related accident.

13. Based upon the fact that Claimant intends to apply for Social Security Disability benefits and based upon injuries he sustained in this work-related accident, I find that he is entitled to the following allocation of total lump sum of \$155,615.46:

- a) \$97,474.26 in compromise of disputed future disability benefits at the rate of \$73.08 per week commencing February 6, 2014, for a period of 25.65 years; representing Claimant's life expectancy pursuant to Section 19-1-150 of the SC Code of Laws and pursuant to Section 42-9-10 and 42-9-20 of the SC Code of Laws as

interpreted by the South Carolina Supreme Court in the decision of James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr, 227 SC 226, 87 SE 2d. 593.

- b) \$51,871.82 as attorneys fees per written agreement between Claimant and attorney.
- c) \$6,269.38 in cost advances and expenses.
- d) \$0.00 towards the payment of future medical benefits

14. That Claimant and Claimant's attorney are entitled to and defendants shall pay, this Award in a lump sum.

CONCLUSIONS OF LAW

1. That this case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That S.C. Code Ann. 42-1-40 is applicable in defining, "average weekly wages."
3. That S.C. Code Ann. 42-1-100 is applicable in defining compensation.
4. That S.C. Code Ann. 42-1-120 is applicable in defining disability.
5. That S.C. Code Ann. 42-1-130 is applicable in defining employee.
6. That S.C. Code Ann. 42-1-140 is applicable in defining employer.
7. That S.C. Code Ann. 42-1-150 is applicable in defining employment.
8. That S.C. Code Ann. 42-1-160 is applicable in defining injury and personal injury.
9. That S.C. Code Ann. 42-9-10 is applicable in defining, "the amount of compensation for total disability."
10. That S.C. Code Ann. 42-15-60 is applicable in determining, "medical, surgical, hospital and other treatment."

11. That S.C. Code Ann. 42-70-40 is applicable in, "governing the conduct of hearing and rendering of awards."

ORDER

NOW, THEREFORE, IT IS ORDERED:

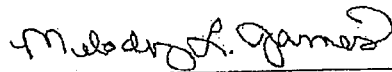
1. That as a result of Claimant's accident at work on or about November 18, 2011, Claimant is totally and permanently disabled pursuant to S.C. Code Ann. §42-9-10, and he has suffered permanent and total wage loss as a result of his myriad work-related injuries, and therefore, is permanently and totally disabled as of his Hearing date on February 6, 2014. Defendants shall pay the commuted value of five-hundred (500) weeks of total disability benefits, minus the number of weeks of temporary total disability benefits paid to Claimant.
2. That the Award provided to Claimant in this Order shall be paid by defendants at the weekly compensation rate of \$484.85.
3. That Claimant is entitled to and defendants shall pay Claimant, the difference between the correct compensation rate of \$484.85, and the incorrect compensation rate paid by defendants in the amount of \$442.09 (a difference of \$42.76 per week) for any and all periods of temporary total disability paid to Claimant in this case.
4. That I find that as a result of Claimant's November 18, 2011, accident at work, Claimant is entitled to have defendants pay for all past causally related medical care and treatment. Medical payments shall be made by defendants to the medical providers, or to the Claimant or his insurance carrier, or the Medicare/Medicaid, if those expenses have been paid by them.

5. That Claimant shall be entitled to, and defendants shall pay for Claimant's lifetime future causally related medical care and treatment pursuant to S.C. Code Ann. §42-9-10, and §42-15-60(C), including, but not limited to, office visits, medications including laxatives and Relistor, injections, periodic colon screening as opined by authorized treating physician, Dr. Neven Hadzijahic (APA #5, p. 135); medications including Oxycotin, Percocet, Lidoderm Patch, Lidoderm, Flexeril, Atenolol, Medrol, Floricet, Amitriptyline, Diclofenac Sodium tablets, Oxycodone, Metformin HCl tablet, Juven, MultiViatmins, Seroquel, Eree Aid Estem Kit, Relistor, Miralax, Nebulizer, Duo Neb, Amitriptyline HCl, Xanax, Penicillin, Boost, Diclofenac Sodium, Cefdinir Capsule, Lactulose Solution, Opana, Senokot, Cyclobenzaprine HCl, follow up office visits, pain management, injections, trigger point injections, steroid injections, physical therapy, electric sleep number bed, walker with built in seat, lift chair, cane/walker, orthotics and/or braces for Claimant's bilateral lower extremities and repeat diagnostic imaging as opined by authorized treating physician, Dr. Theodore Pappas (APA #7, p. 185); office visits, repeat diagnostic imaging, defecography, colostomy bags and stoma paste as opined by authorized treating physician, Dr. Bruce A. Crookes (APA #8, p. 359); office visits, medications, pain management, injections, physical therapy, orthotics, braces and diagnostic imaging as opined by Dr. Langdon Hartsock (APA #6, p. 155). Furthermore, that Claimant is entitled to bags and supplies for his ileostomy as it is clear that Claimant still has two separate stomas (openings) in his body as a result of his work-related accident.

6. That Claimant and Claimant's attorney are entitled to, and defendants shall pay, this award in a lump sum.

7. The allocation of the lump sum ordered in this Order, shall be made pursuant to the offset allocation allowed by the cases of James vs. Anne's 390 S.C. 188, 701 S.E.2d 730 and Utica Mohawk Mills vs. Orr, 227 SC 226, 87 SE 2d. 593, and as is set out above in this order.

AND IT IS SO ORDERED.



Commissioner Melody L. James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

May 20, 2014

By: Tamara Morris, Administrative Assistant to Commissioner James

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1116698

Gus A. King,

Employee-Claimant,

vs.

Pierside Boatworks, Employer, and PMA
Insurance Group, Carrier,

Defendants:

AGREEMENT FOLLOWING
MEDIATION CONFERENCE

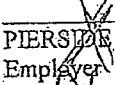
Following a mediation conference before F. Earl Ellis, Jr., the mutually agreed upon mediator, the parties to the case agree that this case has been fully and completely resolved by agreement as follows:

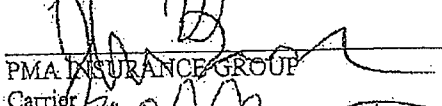
1. The employer/carrier shall pay \$1,000,000 (FEE) to the claimant which total figure includes all costs, benefits, liens, expenses, and attorney fees. (FEE)
2. All payments will be made no later than (FEE) MEDICAL coverage in place until check is delivered to claimant's attorney.
3. The employer/carrier will prepare an Agreement and Release, releasing all parties or entities from all claims by the claimant which will be signed by the claimant and claimant's attorney. (FEE) 4. Defendant will pay outstanding medical bills known to Defendant. (FEE) than today's date.

Dated this 2nd day of JUNE, 2016.

WE AGREE:


GUS A. KING
Claimant

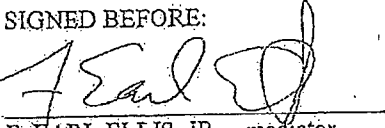

PIERSIDE BOATWORKS
Employer


PMA INSURANCE GROUP
Carrier


JAMES G. CHRISTMAS, ESQUIRE
Attorney for Claimant


R. DANIEL ADDISON, ESQUIRE
Attorney for Defendants

SIGNED BEFORE:


F. EARL ELLIS, JR. - mediator

South Carolina Workers' Compensation Commission
333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
803) 737.5675 www.wcc.sc.gov



WCC File #: 1116698
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Gus A. King SSN: - - - Employer's Name: Pierside Boatworks
Address: _____ Address: _____
City: _____ State: _____ Zip: _____ City: _____ State: _____ Zip: _____
Home Phone: () - - - - - Work Phone: () - - - - - Insurance Carrier: PMA Insurance Group
Claimant's Attorney: James G. Christmas, Esquire Employer Carrier Attorney: R. Daniel Addison, Esquire
Phone: 843-849-2800 Email: _____ Phone: 803-727-1200 Email: _____
F. Earl Ellis, Jr. Mediator earl.ellis@arlaw.com 6/2/16
Preparer's Signature Title Email Date

Pursuant to Reg. 67-1803 A. and 67-1809, the undersigned duly qualified Mediator reports the following results of the mediation held on 6/2/2016:

The following issues mediated and are settled or contested as indicated below:

ISSUE	SETTLED	CONTESTED
	XX	

Per agreement of the Parties the matter is to be:

- ☐ Rescheduled pursuant to Reg. 67-1804 C. on _____
- ☐ Set for hearing to determine all issues.
- ☐ Set for hearing to determine remaining issues pursuant to the Formis 58.
- ☐ Returned to General Files pending request for hearing from either Party.

The _____ Claimant ☒ Defendants shall submit the Final Agreement & Release, Consent Order, Form 16A, or other appropriate documentation regarding the agreement to the Commission.

The costs of the mediation is : \$2,421.25.

The cost was shared equally by the Parties.

The total cost was paid by the ☐ Claimant ☐ Defense.

The cost was paid pursuant to an Order of the Commission pursuant to Reg. 67-1807.

Mediator: F. Earl Ellis, Jr., Esquire Address: 1501 Main Street, 5th Floor, Columbia, SC 29201
Phone: 803-254-4190 Email: earl.ellis@arlaw.com

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675 or mediation@wcc.sc.gov. Refer to Regulation 67-1801.

WCC FORM # 70
Created 7/13

70

JUN 02 2016

MEDIATOR REPORT

(FRONT DESK)
Workers' Comp Comm

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843) 849-2800 or reply to this e-mail and delete all copies of this message.

From: Daniel Addison [<mailto:DAddison@hedrickgardner.com>]
Sent: Tuesday, June 14, 2016 2:46 PM
To: Gary Christmas
Cc: 'Jackie_Holland@pmagroup.com'; Jeff.Bonner@pmagroup.com
Subject: King, Gus A. v. Pierside Boatworks - W000383676:

Gary – we were informed this morning that Mr. King died last week in an automobile crash. We are all terribly sorry to hear the news.

Given this circumstance, and the un-finalized settlement, this puts us in a different situation vis-à-vis the settlement reached at mediation. PMA has placed a stop payment order on the check I forwarded to you last week, and we are reviewing the situation to determine how we will proceed on the case. Mr. King's death creates a complex "soup" for the legal components of our case, and everything is being placed on hold for now regarding the settlement that was negotiated June 2, 2016 on the future medical costs of Mr. King's claim.

I would ask that you contact me asap to discuss this case and the issues raised by Mr. King's death. I will be leaving my office shortly and unavailable the rest of the afternoon today, but will be available all of tomorrow morning.

Dan Addison
Partner
Hedrick Gardner Kincheloe & Garofalo LLP
P. O. Box 11267
Columbia, SC 29211
Direct Phone: 803.727.1201
Fax: 803.727.1259
daddison@hedrickgardner.com
www.hedrickgardner.com

CONFIDENTIALITY The information contained in this transmission is privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or by replying to this email and delete all copies of this message and all attachments. IRS Circular 230 Disclosure: Recently adopted IRS regulations provide that for the purpose of avoiding federal tax penalties a taxpayer may rely only on formal, written advice meeting specific requirements. Any tax advice included in this message and its accompanying attachments does not meet those IRS requirements. It is not intended to be used, and cannot be used, for the purpose of avoiding federal tax penalties or promoting, marketing or recommending to another party, any transaction or matter addressed herein.



IF YOU HAVE ANY QUESTIONS PLEASE CALL:
PMA CALL CENTER
(888) 476-2669

GUS KING & HOWELL AND CHRISTMAS LLC
HEDRICK GARDNER KINCHELOE & GAROFALO, LLP
PO BOX 11267
COLUMBIA SC 29211

CHECK NO.: 9076299C
CHECK DATE: 06/04/16
CHECK AMT.: \$1,000,000.00
PAY PERIOD: 06/02/16-06/02/16
PD TO DATE:
RATE.....
VOUCHER NO: C103683898
BILL NO....

ACCIDENT DT: 11/18/11
PAYMNT TYPE: WORKERS' COMP - MEDICAL
INSURED.... PIERSTIDE BOATWORKS
CLAIM NO...: W000383676
POLICY NO...: 2011010301903
INVOICE NO.: CLINCHER
INVOICE DT.: 06/03/16
INVOICE AMT:
IRS NUMBER.. 57-1085550-
PATIENT ID.:
INJURED.... GUS KING
INJURED SSN: [REDACTED]

Page 1 of 1

FROM - THRU	BILLING CODE	DESCRIPTION	QTY	BILLED AMT	PAYMENT AMT	REASON
-------------	--------------	-------------	-----	------------	-------------	--------

EXPLANATION OF BENEFITS

Payment Type : DOCTOR

SETTLEMENT - SETTLEMENT IN FULL.....1000000.00

NET AMOUNT

1000000.00

Memo: CLAIM W000383676

"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

WARNING: THIS CHECK IS PRINTED ON CHEMICAL REACTIVE PAPER WHICH CONTAINS AN ANTI-FEEL WATERMARK ON REVERSE SIDE. HOLD AT ANGLE TO VIEW.

NOT VALID 6 MONTHS AFTER DATE OF ISSUE

522
311

CHECK NUMBER	DATE	AMOUNT
9076299C	06/04/16	1,000,000.00

WELLS FARGO BANK N.A.

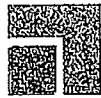
PAY TO THE ORDER OF: One Million And 00/100 US Dollars

GUS KING & HOWELL AND CHRISTMAS LLC
HEDRICK GARDNER KINCHELOE & GAROFALO, LLP
PO BOX 11267
COLUMBIA SC 29211

Authorized Signatures: Vincent H. Donnelly, John M. Cochran

WARNING: THIS CHECK CONTAINS A MICROPRINTED BORDER. YOUR FINGER SHOULD FEEL UNDER MAGNIFICATION.

1109907529911 1073110022100 207995002669711



HEDRICK GARDNER

HEDRICK GARDNER KINCHELOE & GAROFALO LLP

ATTORNEYS AT LAW

CHARLOTTE • RALEIGH • WILMINGTON • COLUMBIA

June 9, 2016

James G. Christmas
Howell & Christmas, LLC
Post Office Box 1896
Mt. Pleasant, SC 29465

Reply To:
R. DANIEL ADDISON
Partner
P.O. Box 11267
Columbia, SC 29211
Direct: (803) 727-1201
Fax: (803) 727-1259
Email: daddison@hedrickgardner.com

RE: Gus A. King v. Pierside Boatworks
WCC File No.: 1116698
Claim No.: W000383676
Our File: 00034L.00080

Dear Gary:

Enclosed please find the settlement check for \$1,000,000.00 in the above referenced matter. We are in the process of finalizing the Agreement and Final Release, but wanted to get this check to you so that you can place this in your trust account pending completion of this settlement. Please note that this amount represents a full and final settlement of all claims in this matter.

Please do not disburse the settlement check until we each receive word from the Workers' Compensation Commission that the Agreement and Final Release has been approved. We will forward the documents to you as soon as they are finalized.

Very sincerely yours,

R. Daniel Addison

RDA/ndh
cc: Jackie Holland

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
(803)737-5723



WCC File #: 1116698
Carrier File #: W000383676
Carrier Code #: 394
Employer FEIN #:

Claimant's Name: GUS KING Employer's Name: PIERSE BOATWORKS
Address: Address: C/O JOHN BROPHY 1300 PIERSE STR
City: Newville State: AL Zip: City: North Charleston State: SC Zip: 29405
Home Phone: Work Phone: Insurance Carrier: PA Mfr's Assn Insurance Company
Preparer's Name: Jackie Holland Law Firm: Howell & Christmas LLC Preparer's Phone #: (888)476-2669

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of weeks T.T.	136	11/19/2011	06/27/2014	\$ 67222.40
2. Number of weeks T.P.				\$
3. Number of weeks P.P.				\$
4. Disfigurement				\$
5. Agreement and Final Release				\$ 1,148,165.69
Total Compensation Paid				\$ 1215388.09
6. Total Medical Benefits* Paid				\$ 1,376,352.88
7. Funeral Benefits				\$ 0.00

☐ Case Denied

Date of Injury: 11/19/2011
(m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: Claimant

By: Jackie Holland
Employer's Representative

06/09/2016
Date
(m/d/yyyy)

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By:

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party	\$
B. Attorney's Fee Paid by Employer	\$
C. Attorney's Fee Paid by Claimant (Non contingent fees, only)	\$

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1116698
Appellate Case No. 2018-001294

RECEIVED
NOV 18 2019
SC Court of Appeals

Ex Parte: Robert Horne, as Personal
Representative of the Estate of Gus A. King,
and Laura King..... Appellants,

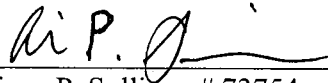
In Re: Gus A. King, Claimant,..... Appellant,

v.

Pierside Boatworks, Employer,
and PMA Insurance Group, Carrier,. Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



Allison P. Sullivan # 73754
BLUESTEIN THOMPSON SULLIVAN, LLC
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599

November 13, 2019

Attorneys for Appellants
Robert Horne and Laura King