

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-3726

RECEIVED
NOV 05 2019
SC Court of Appeals

Raquel Martinez, Employee, Respondent,

v.

Spartanburg County, Employer,
and South Carolina Association of Counties
Self-Insurance Fund, Carrier, Appellants.

**JOINT MOTION FOR STAY AND
SUSPENSION OF BRIEFING SCHEDULE**

Pursuant to Rule 240, SCACR, Appellants Spartanburg County and South Carolina Association of Counties Self-Insurance Fund and Respondent Raquel Martinez (jointly referred to as “the Parties”), by and through their undersigned counsel, hereby file this Joint Motion for Stay and Suspension of Briefing Schedule in this matter until The South Carolina Supreme Court rules on Appellants’ Petition for Writ of Certiorari.

1. This case arises out of an incident that occurred on April 4, 2005 and has been the subject of multiple appeals and remands. Despite over fourteen years having passed since the date of the alleged accident, there is still no decision on compensability.

2. On August 12, 2019, Appellants filed a Notice of Appeal with the South Carolina Court of Appeals appealing the Orders of the Honorable J. Mark Hayes, II, dated February 25, 2009; December 3, 2015; May 2, 2016; October 3, 2018; and July 15, 2019. (*See* Attachment A).

3. This is the third time this case has been before the Court of Appeals.

4. On August 14, 2019, Appellants filed a common law Petition for a Writ of Certiorari in this matter with the Supreme Court of South Carolina requesting the Supreme Court accept the matter in its original jurisdiction under Rule 245(c), SCACR. (*See* Attachment B).

5. On August 23, 2019, Respondent filed a Return to Appellants' Petition for a Writ of Certiorari with the Supreme Court. In her Return, Respondent argued Appellants' Petition should be denied; however, Respondent asserted that as an alternative to taking the matter in its original jurisdiction, the Supreme Court could take jurisdiction under Rule 204(b), SCACR. (*See* Attachment C).

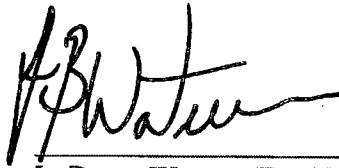
6. Appellants' Petition for a Writ of Certiorari is currently pending before the Supreme Court.

7. Should the Supreme Court grant Appellants' Petition for Writ of Certiorari, or alternatively decide to take jurisdiction under Rule 204(b), SCACR, then the current appeal before this Court will be moot.

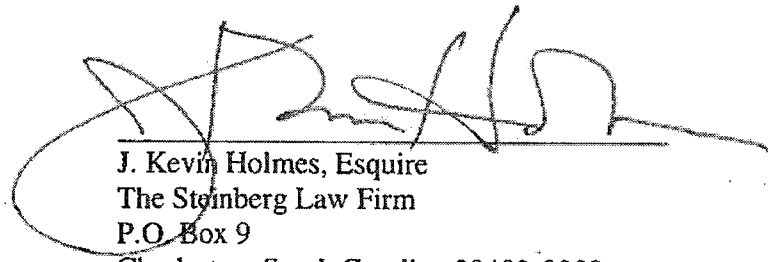
8. In the interests of judicial economy and given the history of this case, the Parties request that the briefing schedule be stayed and suspended until the Supreme Court rules on Appellants' Petition for Writ of Certiorari.

WHEREFORE, the Parties respectfully move for an Order from this Court staying and suspending the briefing schedule until the Supreme Court issues a ruling on Appellants' Petition for Writ of Certiorari.

Respectfully submitted,



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Date: November 4, 2019

Raquel Martinez v. Spartanburg County
Appellate Case No. 2019-001382
Joint Motion for Stay and Suspension of Briefing Schedule

Attachment

A

THE STATE OF SOUTH CAROLINA
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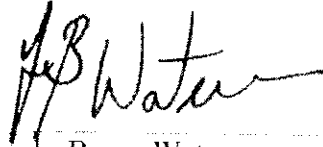
v.

Spartanburg County, Employer,
and South Carolina Association of Counties
Self-Insurance Fund, Carrier, Appellants.

NOTICE OF APPEAL

Spartanburg County and S.C. Association of Counties Self-Insurance Fund appeal the Orders of the Honorable J. Mark Hayes, II, dated February 25, 2009; December 3, 2015; May 2, 2016; October 3, 2018; and July 15, 2019. Appellants received a copy of the Orders of July 15, 2019 on July 15, 2019.

August 12, 2019



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Raquel Martinez v. Spartanburg County
Appellate Case No. 2019-001382
Joint Motion for Stay and Suspension of Briefing Schedule

Attachment B

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August 14, 2019

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

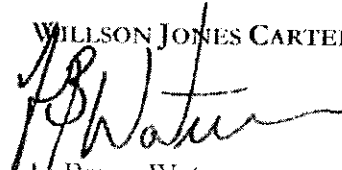
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AUG 19 2019
S.C. SUPREME COURT

Re: Raquel Martinez vs. Spartanburg County
Case No.: 2017-CP-42-3726
WCC File No.: 0515098 DOI: 4/4/2005
Carrier: South Carolina Association Of Counties - Claim No.: 58-218332
WJC&B File No.: 0560.00114

Dear Mr. Shearouse:

Enclosed please find an original and seven (7) copies of a common law Petition for Certiorari and Notice relative to the above-captioned matter, as well as a filing fee check in the amount of \$50.00 and a Proof of Service indicating the Petition has been served on opposing counsel. At this time, I would greatly appreciate your filing these documents and returning one (1) clocked copy of the Petition to me in the enclosed self-addressed stamped envelope.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

L. Brenn Watson

Enclosures

cc: Chadwick D. Pye, Esq.
J. Kevin Holmes, Esq.
David T. Pearlman, Esq.
S.C. Court of Appeals
Spartanburg County Clerk of Court
S.C. Workers' Compensation Commission Judicial Dept.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

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Raquel Martinez,

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Spartanburg County and
S.C. Association of Counties
Self-Insurance Fund,

Petitioners.

PROOF OF SERVICE

I hereby certify that I have served the Petition for A Writ of Certiorari and Notice on Raquel Martinez by depositing a copy of it in the United State Mail, postage prepaid, on August 14, 2019, addressed to her attorneys of record, Chadwick D. Pye, Esquire, Chadwick D. Pye, LLC, P.O. Box 6346, Spartanburg, South Carolina 29304 and J. Kevin Holmes, Esquire and David T. Pearlman, Esquire, The Steinberg Law Firm, P.O. Box 9, Charleston, South Carolina 29402-0009, and on The Honorable Jenny Abbott Kitchings, S.C. Court of Appeals, P.O. Box 11629, Columbia, South Carolina 29211; The Honorable Amy W. Cox, Spartanburg County Clerk of Court, P.O. Box 3483, Spartanburg, South Carolina 29304; and the South Carolina Workers' Compensation Commission Judicial Department, P.O. Box 1715, Columbia, South Carolina 29202.

August 14, 2019



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INTRODUCTION

“Justice delayed is justice denied.” – William E. Gladstone (1868).¹ This workers’ compensation claim arises from an incident that occurred on April 4, 2005, over fourteen years ago.² Respondent Raquel Martinez (“Martinez”), who was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff’s Department at the time, alleges she suffered a mental injury as a result of investigating an accident in which a Greenville County Sheriff’s Deputy had accidentally backed over and killed his two-year-old daughter. This case has been heard by six different Commissioners of the South Carolina Workers’ Compensation Commission (“the Commission”). All six Commissioners have determined the claim is not compensable under the South Carolina Workers’ Compensation Act because Martinez’s investigation of the accident on April 4, 2005 (1) was not an unusual or extraordinary condition of her employment and (2) was not the proximate cause of her mental condition.

This case has been appealed to the circuit court on three separate occasions,³ and on each appeal to the circuit court, the case has been assigned to Judge Mark J. Hayes, II, who has heard oral arguments five different times. Despite the unanimous opinions of the Commissioners who have heard the case, following each appeal to the circuit court, Judge Hayes has issued Orders reversing and remanding the case to the Commission. His latest Order, dated July 15, 2019, threatens criminal and civil contempt proceedings against members of the Commission.

¹ Fred R. Shapiro, *You Can Quote Them*, Yale Alumni Magazine, May-June 2010.

² At the time of the accident on April 4, 2005, President George W. Bush was less than 3 months into his second term as President; Apple, Inc. was more than 2 years away from releasing the first iPhone; Pluto was still a planet; and the South Carolina Supreme Court was comprised of five different Justices [The current longest serving Justice on this Court (Chief Justice Beatty) was still nearly 2 years away from being elected to serve as an Associate Justice on the South Carolina Supreme Court.]

³ Since the alleged date of injury was prior to the July 1, 2007 amendment of S.C. Code Ann. § 42-17-60, an appeal from the Commission was required to first be made to the circuit court.

This case has now been appealed to the Court of Appeals on three separate occasions.⁴ Notably, in 2011, the Court of Appeals issued a decision reversing the first order of Judge Hayes and holding that substantial evidence supported the Commission's finding that Martinez did not suffer an "unusual or extraordinary" condition of her employment.⁵ Following the Court of Appeals' decision, Martinez sought review by this Court, which granted certiorari and heard oral arguments on October 15, 2013. On January 8, 2014, this Court vacated the Court of Appeals' opinion and remanded the case back to the Commission on the grounds that the circuit court's order was not immediately appealable pursuant to its prior decision in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013).⁶ Since then, this case has been assigned to *legal purgatory*, seemingly without escape from endless appeals and remands.

JURISDICTION

Pursuant to S.C. Const. Art. V, Section 5 and S.C. Code Ann. Section 14-3-310 (1976), Petitioners, Spartanburg County and the South Carolina Association of Counties Self-Insured Fund, petition this Court to issue a Writ of Certiorari to review the decision of Circuit Court Judge J. Mark Hayes, II in the workers' compensation case of *Raquel Martinez v. Spartanburg County, Employer, and South Carolina Association of Counties Self-Insurance Fund, Carrier*, Circuit Court Case No. 2017-CP-42-3726, SCWCC File No. 0515098.

⁴ Petitioners most recently filed a Notice of Appeal with the South Carolina Court of Appeals on August 12, 2019.

⁵ Martinez v. Spartanburg County, 394 S.C. 224, 715 S.E.2d 339 (Ct. App. 2011), *vacated*, 406 S.C. 532, 753 S.E.2d 436 (2014)

⁶ Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E.2d 436 (2014).

COMPLAINT

Petitioners respectfully assert that Judge Hayes erred in each of his prior Orders⁷ by: (a) reversing the three previous Decisions and Orders of South Carolina Workers' Compensation Commission's Appellate Panel ("the Appellate Panel"), which all held Martinez did not sustain a compensable injury by accident arising out of and in the course of her employment on April 4, 2005; (b) remanding the case back to the Appellate Panel on three separate occasions; (c) reversing the Appellate Panel's specific findings of fact and conclusions of law in each of its prior Decisions and Orders regarding compensability and Martinez's relationship with Officer Johnson; (d) instructing the Appellate Panel to delete its findings of fact regarding Martinez's relationship with Officer Johnson and to make a specific findings that Martinez had a "law enforcement relationship with Officer Johnson"; (e) reversing the Appellate Panel's specific findings of fact and conclusions of law in each of its prior Decisions and Orders regarding causation of Martinez's mental condition; (f) holding that he established causation as a matter of law in his February 25, 2009 Order; (g) instructing the Appellate Panel to delete its specific findings of fact and rulings of law regarding causation and to substitute a ruling that the investigation performed by Martinez on April 4, 2005 caused her mental injury; and (h) threatening the Appellate Panel in his Amended Order, filed July 15, 2019, with the use of his "powers... to punish for civil or criminal contempt...and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning" for his perceived failure by the Appellate Panel to conform with his Orders.

⁷ Judges Hayes has issued six (6) separate Orders in this case: Order, filed February 25, 2009; Order, filed December 3, 2015; Order Denying Motion to Alter or Amend Judgment, filed May 2, 2016; Order, filed October 3, 2018; and Order Denying Rule 59(e) Motion to Alter or Amend, filed July 15, 2019; and Amended Order, filed July 15, 2019. Petitioners raise issue with all six of Judge Hayes's prior Orders. While Petitioners contend Judge Hayes has erred in each of his six Orders, Petitioners will focus this Petition on three primary Orders: the Order of February 25, 2009; the Order of October 3, 2018; and the Amended Order of July 15, 2019.

Specifically, Petitioners believe Judge Hayes exceeded the statutory authority granted by the legislature, his scope of review under Section 1-23-380 of the Administrative Procedures Act (“APA”)⁸, and his appellate jurisdiction, and thus, violated Article V, Section 11 of the South Carolina Constitution and Petitioner’s rights under Article I, Section 3 and Section 22 of the South Carolina Constitution, in his prior Orders by: (a) reversing each of the Appellate Panel’s Decisions and Orders; (b) reversing the Appellate Panel’s detailed findings of fact regarding compensability, the relationship between Martinez and Office Johnson, and causation of Martinez’s mental condition; (c) instructing the Appellate Panel delete specific findings of fact, (d) ordering the Appellate Panel to make certain findings of fact; (e) holding that he established causation of Martinez’s mental condition as a matter of law; (f) making determinations regarding the credibility of the witnesses; and (g) threatening the Appellate Panel with his “powers” to punish for civil or criminal contempt and report for judicial or professional sanctioning.

Finally, Petitioners acknowledge this Court’s decision in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), which defined “final judgment” under Section 1-23-390 of the APA⁹ and held a circuit court order remanding a matter to the Commission for further proceedings does not constitute a final judgment as required Section 1-23-390, and was thus, not immediately appealable. However, Petitioners assert Bone’s interpretation and application of Section 1-23-390 violates the due process and equal protection rights of workers’ compensation defendants. (*See* S.C. Const. art. I, §3 & §22). Alternatively, assuming arguendo that Bone’s interpretation of Section 1-23-390 is not unconstitutional on its face, its application to Petitioners in the present case violates Petitioners’ due process and equal protection rights. The decision in Bone, and its

⁸ S.C. Code Ann. § 1-23-380 (1977)

⁹ S.C. Code Ann. § 1-23-390 (Supp. 2012)

application in this case, has locked this case into a continuous cycle of remands, prevented Petitioners - as well as Respondent - from obtaining any type of finality, and spoiled any possible interest in judicial economy.

QUESTIONS PRESENTED

1. Did the Circuit Court exceed its scope of review under Section 1-23-380 in its Orders from February 25, 2009, December 3, 2015, October 3, 2018, and July 15, 2019?
2. Does the application of Section 1-23-390 to Petitioners as shown in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), violate Petitioners' equal protection and due process rights?

STATEMENT OF THE CASE

Respondent Raquel Martinez ("Martinez") was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff's Department. On April 21, 2006, Martinez filed a Form 50 alleging that she had suffered a mental injury as a result of investigating an accident in which a Greenville County Deputy Sheriff had accidentally backed over and killed his two-year-old daughter. On May 12, 2006, Spartanburg County and its carrier, the South Carolina Association of Counties Self-Insurance Fund (collectively "Petitioners") filed their Form 51 denying, inter alia, that Martinez suffered a compensable mental injury as a result of any unusual or extraordinary condition of employment.

A hearing was held before Commissioner G. Bryan Lyndon on September 6, 2006, in Spartanburg, South Carolina. At the hearing, Martinez contended that while performing an investigation on April 4, 2005, as part of her duties with the Spartanburg County Sheriff's Department, she encountered an unusual and extraordinary condition of employment, which subsequently led to her mental breakdown and hospitalization. Martinez alleged she was permanently and totally disabled and requested a lump sum payment of the award. Petitioners contended that Martinez did not suffer a compensable mental injury as a result of an unusual or extraordinary condition of her employment. Petitioners asserted that Martinez was employed as a forensic investigator, that it was her job to investigate homicide and death cases, and that she was performing her regular job when she investigated the child's accidental death on April 4, 2005.

On November 20, 2006, Commissioner Lyndon issued his Decision and Order finding, inter alia, that the investigation of the accident on April 4, 2005 was not an unusual or extraordinary condition of employment and not the proximate cause of Martinez's mental condition.

Within the statutory period, counsel for Martinez filed a Form 30, Request for Commission Review, setting forth grounds for review. Oral arguments were presented before an Appellate Panel on April 23, 2007, and on May 22, 2007, the Appellate Panel issued its Order unanimously affirming the Single Commissioner's Order in its entirety.

Thereafter, Martinez filed an appeal with the Spartanburg County Circuit Court. On February 25, 2009, Judge J. Mark Hayes, II, issued an Order holding that the Appellate Panel's Order lacked sufficient detail to enable the Court to determine whether those findings were supported by substantial evidence. (Order, dated 2/25/2009, p. 3-4). In his Order, Judge Hayes specifically stated that "this Court is left to speculate if the proper analysis was applied by the Commission and whether the factual conclusions upon which the law was applied had a substantial basis in the record." *Id.* at 9-10. As such, Judge Hayes reversed the Appellate Panel's Order and remanded the case back to the Commission for additional findings of fact. *Id.* at 19.

Petitioners timely filed their Notice of Appeal with the South Carolina Court of Appeals on March 16, 2009. On June 15, 2011, the Court of Appeals filed its Order reversing the decision of the Circuit Court.¹⁰ Judge Williams, writing for the majority, concluded that the Appellate Panel's Order was sufficiently detailed to enable appellate review and that the record contained substantial evidence to support the Commission's decision that Martinez did not suffer an unusual or extraordinary condition of her particular employment on April 4, 2005. Because the Court of Appeals concluded that there was substantial evidence that Martinez did not suffer an unusual or extraordinary condition in her particular employment, the majority did not address the issue of

¹⁰ *Martinez v. Spartanburg County*, 394 S.C. 224, 715 S.E.2d 339 (Ct. App. 2011), *vacated*, 406 S.C. 532, 753 S.E.2d 436 (2014).

“proximate cause.”¹¹ Martinez timely filed a Petition for Rehearing, which was denied by the Court of Appeals on October 6, 2011.

On November 2, 2011, Martinez filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, and the Petition was granted on February 7, 2013. The Supreme Court heard oral arguments on October 15, 2013. On January 8, 2014, the Supreme Court filed its decision and held that pursuant to Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), the circuit court’s order was not a final judgment and therefore was not appealable. Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E.2d 436 (2014). As such, the Supreme Court vacated the Court of Appeals’ Order and remanded the case to the Commission for further proceedings. Id.

Pursuant to the Commission’s Administrative Order, filed August 15, 2014, the case was remanded to an Appellate Panel to take such action and enter an Order consistent with this Court’s directive. Oral arguments were held before an Appellate Panel on December 15, 2014, and on February 24, 2015, the Appellate Panel issued its Decision and Order and noted:

Because the Circuit Court found that the Commission’s Order lacked an “explicit statement of facts...sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by the evidence,” the Commission withdraws its previous Findings of Fact and hereby substitutes the following Findings of Fact for the Court’s consideration.

(SCWCC Decision & Order, dated 2/24/2015, p. 5). The Appellate Panel again denied Martinez’s claim. The Appellate Panel concluded Martinez failed to prove (1) that the work conditions on April 4, 2005 were unusual or extraordinary in comparison to her normal conditions of employment and (2) that her mental health condition was proximately caused by the work incident

¹¹ In a separate opinion, Chief Judge Few concurred with the majority’s holding that there was substantial evidence Martinez did not suffer an unusual or extraordinary condition in her particular employment, but he also opined that “the commission’s determination that the claimant failed to prove proximate cause is supported by substantial evidence.” Id. at 239-240, 715 S.E.2d 347-348.

on April 4, 2005. *Id.* at 45-46. In support of its decision, the Appellate Panel issued ninety-nine detailed Findings of Fact. *See Id.* at 6-45.

Subsequently, on March 11, 2015, Martinez filed an appeal to the Spartanburg County Circuit Court. The case was again assigned to Judge J. Mark Hayes, II. On December 3, 2015, Judge Hayes entered an Order reversing the Appellate Panel and remanding the matter to the Commission. (Order dated 12/3/2015, p. 27). Judge Hayes ruled that *he had* established causation of the mental health condition as a matter of law in his previous Order and directed the Commission to find the same. *Id.* Petitioners filed their Motion to Alter or Amend a Judgment pursuant to Rule 59(e), S.C.R.C.P. on December 11, 2015. Petitioners also filed a Memorandum in Support of their Rule 59(e) Motion raising multiple exceptions, including that the Circuit Court exceeded its scope of review under Section 1-23-380. On May 2, 2016, the Circuit Court issued an Order denying Appellants' Motion.

On May 18, 2016, Petitioners filed their Notice of Appeal with the South Carolina Court of Appeals. On May 20, 2016, Martinez filed a Motion to Dismiss contending the Circuit Court's Order was interlocutory and not immediately appealable. On May 31, 2016, Petitioners filed a Return to the Motion to Dismiss. On July 21, 2016, arguing, *inter alia*, that the application of Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), to this case violated Petitioners' equal protection and due process rights and that the issues of appellate review in this case were distinguishable from the issues in Bone. Without specifically addressing the Petitioners' constitutional arguments, the Court of Appeals issued an Order on July 21, 2016 granting Martinez's Motion to Dismiss, and the case was subsequently remitted to the Commission.¹²

¹² Petitioners filed a Petition for Writ of Certiorari with the Supreme Court on August 10, 2016, but the Petition was withdrawn and dismissed by the Supreme Court on August 15, 2016.

On September 19, 2016, the Commissioner's Chairman issued an Order assigning the case to the Appellate Panel. Counsel for Martinez sent a letter to the Chairman on October 31, 2016, requesting oral arguments regarding the remand issues. On December 15, 2016, the Appellate Panel responded with a letter denying Martinez's request for oral arguments and noting that the Circuit Court did not order the Commission to seek additional arguments or evidence from the parties. The Appellate Panel further stated it was continuing to meticulously review the extensive record and the Orders of the Circuit Court.

After considering the issues, the Appellate Panel filed its third Decision and Order in this case on August 22, 2017.¹³ The Appellate Panel specifically noted the instructions from Judge Hayes's December 3, 2015 Order, and the Appellate Panel stated:

In light of these instructions, and after carefully reconsidering and reviewing the whole record, including but not limited to the testimony of the only witnesses who testified at the Hearing, and cognizant of our role as fact finders, we are unable to reach any other factual conclusions than those that were made in our Decision and Order of February 24, 2015. Because the Circuit Court found that the original Full Commission Order was deficient and not sufficiently detailed in its findings to allow appellate review, the Appellate Panel has complied with the Court's directive. Therefore, based on the entire record, and specifically including the testimony of the witnesses who testified at the Hearing, we make, based on the substantial evidence identified herein, the following findings of fact with our corrections and clarifications.

(SCWCC Decision & Order, dated 8/22/2017, p. 3). The Appellate Panel then issued ninety-nine findings of fact and again concluded that Martinez failed to prove that she encountered unusual or extraordinary work conditions in her employment with the Spartanburg County Sheriff's Department on April 4, 2005, as compared to her normal conditions of employment. *Id.* at 3-30.

¹³ The Appellate Panel initially issued a Decision & Order on August 4, 2017; however, a page was inadvertently excluded when it was served on the parties. As a result, the Appellate Panel vacated the August 4, 2017 Order and issued an Amended Decision & Order, dated August 22, 2017.

The Appellate Panel specifically found that Martinez's relationship with the father of the child-victim (whether by virtue that the father was a fellow law enforcement officer or otherwise) was insufficient to transform the condition of Martinez's employment on April 4, 2005 into the extraordinary and unusual. *Id.* at 8-10. In addition, the Appellate Panel found that Martinez failed to prove that the accident investigation on April 4, 2005 proximately caused her mental breakdown, and that her breakdown was proximately caused by multiple factors, including her "cousin's" death, the taking of Xanax followed by an abrupt cessation, her "overtaking" of Lortab, and her myriad of health issues. *Id.* at 31.

On August 29, 2017, Martinez filed a Motion for Rehearing with the Appellate Panel. The Commission issued an Order denying the Motion on September 18, 2017. Martinez then filed a Notice of Appeal and a Petition for Judicial Review with the Spartanburg County Circuit Court on October 12, 2017. For a third time, the case was assigned to Judge J. Mark Hayes, II, who heard the matter on March 12, 2018.

On October 3, 2018, Judge Hayes entered an Order reversing the Appellate Panel's August 22, 2017 Order and remanding the matter back to the Commission. (Order, dated 10/3/2018, pp. 9-10). Judge Hayes ruled that he had established causation of the mental health condition as a matter of law in his previous Order and directed the Commission to find the same. *Id.* at 6 & 9. He also ordered the Commission to find whether the horrific death of an infant run over by her police officer father with whom the Petitioner had a law enforcement relationship made the crime scene investigation unusual and extraordinary. *Id.* at 9-10.

Petitioners filed a Motion to Alter or Amend Judgment Pursuant to S.C.R.C.P. 59(e) with the Circuit Court on October 12, 2017, and a hearing on the Motion was held on December 20, 2018. On July 15, 2019, Judge Hayes issued an Order denying Petitioner's Motion with the

exception of two grounds.¹⁴ That same day, Judge Hayes filed his Amended Order again reversing the Appellate Panel's Order, ruling that he had established causation of the mental health condition as a matter of law in his previous Order, and directing the Commission to find the same. (Amended Order, dated 7/15/2019, pp. 6-7, 9). He also ordered the Commission to find whether the horrific death of an infant run over by her police officer father with whom the Petitioner had a law enforcement relationship made the crime scene investigation unusual and extraordinary. *Id.* at 10. Judge Hayes further admonished the Appellate Panel against failing "to follow the law and comply with [his] Order," and he threatened the Appellate Panel with the use of his "powers... to punish for civil or criminal contempt...and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning" for the perceived failure by the Appellate Panel to conform with his Orders. *Id.* at 8.

Petitioners filed a Notice of Appeal with the Court of Appeals on August 12, 2019.

¹⁴ The two grounds from Petitioners Motion to Alter or Amend Judgment that the Circuit Court granted were:

8. The Circuit Court erred in holding that Captain Denton and [Martinez] were the only witnesses who testified at the hearing, the error being that Ramon Martínez (Martinez's father) and Caridad Martínez (Martinez's mother) also testified at the hearing.

9. The Circuit Court erred by finding Captain Denton and [Martinez] were "credible," the errors being that (a) this finding exceeds the Circuit Court's scope of review under Section 1-23-380, S.C. Code Ann. (1976) and (b) the determination of witness credibility is strictly reserved to the Commission. *Brown v. Peoples Gas Corp.*, 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013); *O'Banner v. Westinghouse Electric Corp.*, 319 S.C. 24, 459 S.E.2d 324 (Ct. App. 1995)

ARGUMENTS

I.

THE CIRCUIT COURT EXCEEDED ITS SCOPE OF REVIEW UNDER SECTION 1-23-380 IN ITS ORDERS FROM FEBRUARY 25, 2009; DECEMBER 3, 2015; AND JULY 15, 2019.

The South Carolina Administrative Procedures Act (“APA”) establishes the standard for judicial review of decisions of the workers’ compensation commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). In workers’ compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).

The “substantial evidence” rule of the APA governs the standard of appellate review in a workers’ compensation case. Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004). Pursuant to the APA, the Circuit Court’s review is limited to deciding whether the appellate panel’s decision is unsupported by substantial evidence or is controlled by some error of law. *See* Grant v. Grant Textiles, 361 S.C. 188, 191, 603 S.E.2d 858, 859 (Ct. App. 2004) (“A reviewing court will not overturn a decision by the workers’ compensation commission unless the determination is unsupported by substantial evidence or is affected by an error of law.”); *See also* Lyles v. Quantum Chem. Co. (Imery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (noting that in reviewing decision of workers’ compensation commission, the Court of Appeals will not set aside the Commission’s findings unless they are not supported by substantial evidence or they are controlled by error of law).

A. The Circuit Court's February 25, 2009 Order.

In his first Order, filed February 25, 2009, Judge Hayes held that the Commission's finding that Martinez failed to prove she encountered an unusual or extraordinary condition in her employment on April 4, 2005 lacked sufficient detail to enable the Court to determine (1) whether its findings were supported by substantial evidence and (2) whether the Appellate Panel applied the proper analysis for determining compensability of her mental injury. As such, Judge Hayes reversed the Commission's finding regarding compensability and remanded the case back to the Commission for further review consistent with his Order.

Petitioners contend Judge's Hayes exceeded his scope of review in his February 25, 2009 Order because he improperly substituted his own opinion and view of the evidence for that of the Commission and essentially re-wrote the Commission's findings of fact. In Footnote 3 of the Order, Judge Hayes improperly set out his own rendition of the facts. Judge Hayes never discussed or examined any of the Commission's findings of facts under the substantial evidence rule. Rather, Judge Hayes engaged in re-weighing the evidence and making findings of fact, which was beyond his scope of review. *See Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000).

With regard to the Commission's finding that Martinez failed to prove that the accident investigation on April 4, 2005 was the proximate cause of her mental breakdown, Judge Hayes initially declared that the Commission's finding on causation was insufficient for judicial review under S.C. Code Ann. Section 1-23-350. (*See Order, dated 2/25/2009, pp.8-10*). He specifically stated:

Here, even though the orders from the Commission give a summary of some of the testimony presented during the hearing, **no basis for the Findings of Facts 14, 15, and 16 is provided, and thus, this Court is left to speculate if the proper analysis was applied by the**

Commission and whether the factual conclusions upon which the law was applied has a substantial basis in the record.¹⁵

Id. at 9-10 (emphasis added). Yet, despite his clear assertion that the Commission's finding regarding causation was not sufficient for judicial review, he then went on to perform a judicial review of the same. Judge Hayes stated:

Again, *assuming* the Order is sufficient for judicial review... the Commission's finding is clearly erroneous, applying the substantial evidence standard of review, because the only conclusion that can be drawn from the medical information is that there exists the necessary showing of proximate cause to link the accident investigation of her friend's child's death and her mental breakdown."

Id. at 14-15 (emphasis added). He added that "The Commission's Order does not suggest, implicitly or expressly, that the proximate cause element of the claim fails because of some intervening or superseding act." Id. p. 15. After claiming that "the Commission's Order requires this Court to *speculate* as to how, factually, [Martinez] did not meet her 'burden of proof'," Judge Hayes concluded that "the only causation conclusion that can be drawn from the record below is that [Martinez] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation." Id. at 17.

By making this conclusion regarding causation in his February 25, 2009 Order, Judge Hayes made multiple errors of law. **First, since Judge Hayes initially determined the Commission's finding regarding causation was insufficient for judicial review, it was an error for him to then perform a judicial review.** If the Appellate Panel's finding regarding causation was insufficient, he should have remanded the case back to the Appellate Panel for

¹⁵ The Single Commissioner's Finding of Fact #16, which the Appellate Panel affirmed and adopted, stated "Claimant failed to prove that the accident investigation on April 4, 2005 was the proximate cause of her mental breakdown, said finding being based on all the evidence in the record." (Single Commissioner Order, dated 11/20/2016, p. 22; *See also* Appellate Panel Order, dated 5/22/2007, pp. 2-3)

further findings of fact regarding causation. *See Turner v. Campbell Soup Co.*, 252 S.C. 446, 166 S.E.2d 817 (1969) (“Remand is proper where the Commission has failed to make essential findings of fact, or the findings made are so indefinite or general as to afford no reasonable basis upon which the appellate court can determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. To hold otherwise in such cases would ... require the appellate court to make the omitted findings of fact which the statute forbids.”).

Additionally, in reaching his conclusion regarding causation of Martinez’s mental condition, Judge Hayes exceeded his scope of review by determining the weight that should be given to certain medical evidence. The weight to be accorded evidence is reserved to the Appellate Panel. *See Shealy*, 341 S.C. 448, 535 S.E.2d 438 (2000). It is obviously apparent from his Order that Judge Hayes did not consider any of the initial medical records which show:

- On April 7, 2005, *three days after the accident investigation*, Martinez saw her family physician, John R. Wieder, M.D., regarding her high blood pressure and headaches. (APA #1, p. 2). Martinez also reported that she was having stress at work, specifically mentioning having to work alternating shifts. *Id.* **However, there was no mention in his report of the accident investigation on April 4, 2005. *Id.***
- On April 18, 2005, *two weeks after the investigation in question*, Martinez’s “cousin”¹⁶ passed away from AIDS. (Tr. 25).
- The first medical attention that Martinez received for emotional stress was from her family doctor on April 19, 2005, *the day after her cousin died*. In his report from that day, Dr. Wieder specifically noted:

She is very upset and crying. A very close friend and relative, a cousin with whom she was very close over the years, passed away. She is very upset about it. They were very close ever since they were little kids. She is very upset that she did not get to the hospital in time to say goodbye before he passed away.
- As a result of her stress on April 19, 2005, Dr. Wieder took Martinez out of work for a few days because “she is going to be helping with the funeral arrangements, and will want to attend the funeral.” *Id.* Dr. Wieder also placed Martinez on Xanax “to help her

¹⁶ The “cousin” – actually Martinez’s ex-husband’s cousin – is described by Martinez herself in the medical records as her “cousin,” “brother,” “best friend,” and “very close friend and relative.”

get through this very trying time.” (APA #1, p. 4). **There was no mention of the April 4, 2005 accident investigation in this report.**

- On April 24, 2005, Martinez was transported via EMS to Spartanburg Regional Medical Center (“SRMC”) after having a syncopal episode, and it was noted that she was unconscious for approximately 25 minutes. (APA #2, p. 13). Martinez reported a history of “heart murmur, vasopressor syncope, and atrial tachycardia. *Id.* **Notably, she also reported “increased stress this week due to death in family.”** *Id.* at 17. **There was no mention of the April 4, 2005 accident investigation in the medical records from SRMC, dated April 24, 2005.**
- The following day, April 25, 2005, Martinez returned to Dr. Wieder with complaints of dizziness, headache, vomiting, and diarrhea, and Dr. Wieder sent Martinez to Mary Black Memorial Hospital. *Id.* (APA #1, p. 4). **There is no mention of the April 4, 2005 accident investigation in Dr. Wieder’s April 25, 2005 report.**
- From April 25, 2005 through April 27, 2005, Martinez was hospitalized on an inpatient basis at Mary Black Hospital. (APA #3, pp. 64-103). **There is no reference to the April 4, 2005 investigation in these hospital records.** *Id.* Instead, the discharge instructions state that she was provided a “referral to mental health therapy *for grieving.*”¹⁷ *Id.* at 81 (emphasis added).
- Martinez returned to Dr. Wieder on ten separate occasions between April 29, 2005 and June 2, 2005 (APA #1, pp. 7-10). **Martinez never mentioned in any of these office visits that she had any stress related to the accident investigation of April 4, 2005.** (APA #1, pp. 7-10). Rather, these records indicate that any stress she was having during this time was due to being out of work for her unrelated health conditions.
- At some point around the first week of August 2005, Martinez abruptly stopped taking the Xanax, which had been prescribed for her after her cousin’s death. (See APA #2, p. 23; Tr. 49). On August 7, 2005, Martinez was transported by EMS to Spartanburg Regional Medical Center because of “patient behavior suggesting psychiatric problems.” (APA #7, p. 167). It was noted in the assessment that *the precipitating event* had been:

**My cousin died mid-April 2005 and I took Xanax for my nerves.
I stopped taking Xanax 1-2 weeks ago and became psychotic.**

(APA #8, p. 179)(emphasis added).
- Martinez was hospitalized on an inpatient basis at SRMC from August 7, 2005 through August 9, 2005. During this hospitalization, Martinez was examined by a psychiatrist, Dr. Chris Caston.¹⁸ (APA #2, pp. 23-25). Dr. Caston’s diagnosis was clinical

¹⁷ As the Appellate Panel found the grieving in this report refers to Claimant’s cousin.

¹⁸ In its subsequent Decisions and Orders, the Appellate Panel specifically found that it gave great weight to Dr. Caston’s medical reports. (See SCWCC Decisions & Orders, dated 2/24/2015 & 8/22/2017, Finding of Fact #44)

psychiatric disorders, Benzodiazepine withdrawal delirium, and anxiety disorder. *Id.* In his discharge note, Dr. Caston stated:

The patient is a 46 year old white female who has been admitted due to delirium thought to be related to Benzodiazepine withdrawal symptoms. The patient has not had Xanax in 3 to 5 days.

* * * * *

The patient had no previous history of psychiatric care. The patient apparently had recent problems with uncontrollable hypertension and also had *problems with anxiety, insomnia and depression related to the death of her best friend who apparently was a male cousin.*

(APA #2, p. 35)(emphasis added). **There is no mention of the April 4, 2005 accident investigation in the SRMC records from August 7, 2005 through August 9, 2005.**

- Martinez was treated at Carolina Center for Behavioral Health on an out-patient basis from August 10, 2005, through August 22, 2005 (APA #8, p. 262). Records describe the reason for the admission as follows:

The patient was admitted after being hospitalized briefly at SRMC. She ended up there after having a brief reaction, possibly psychotic in nature to abruptly stopping her Xanax. She started the Xanax 2mg a day six weeks ago **after suffering an acute anxiety reaction to the death of a relative.** She was vulnerable at the time due to stressors at work. She works as a police officer. **She feels she was in an emotionally vulnerable state when the relative died.¹⁹ This heightened her reaction to it. She was placed on Xanax.** She did reasonably well. She felt that she needed to get off the medication. She did so basically by stopping it.

(APA #4, p. 107)(emphasis added). Additionally, Martinez reported that the precipitating events to her mental breakdown were: **“My cousin died mid-April 05 and I took Xanax for my nerves. I stopped taking Xanax 1-2 weeks ago and became psychotic.”** (APA #8, p. 179)(emphasis added).

- The first mention of the April 4, 2005 accident investigation was not until August 10, 2005, *over four months after the accident investigation*, when a nurse at Carolina Center for Behavioral Health Martinez noted the following under the “Lost Something/Someone You Loved” portion of the initial assessment form: “brother [i.e.,

¹⁹ As the Appellate Panel specifically found in its subsequent Decisions & Orders, “This statement demonstrates that Claimant herself believes that the ‘final straw’ was the death of the cousin—not the toddler’s death.” (See SCWCC Decisions & Orders, dated 2/24/2015 & 8/22/2017, Finding of Fact #54).

cousin] -- *also* saw 2 yr old child of friend & co-worker on case she worked in job as forensic police officer." *Id.* at 178 (emphasis added).²⁰

- Martinez did not mention the child's death until *after* she realized she would not be able to return to her job as a law enforcement officer due to her psychiatric admission. Records from SRMC, dated August 8, 2005 -- *two days before the first mention of the child's death* - note that Martinez was worried about still having a job and that she "**believes that she'll be fired because of her [psych] admission.**" (APA #2, pp. 52 & 56)(emphasis added). When she presented to Carolinas Center for Behavior Health on August 10, 2005, it was noted on the initial assessment form that she was "**applying for disability**" due to "**job concern.**" (APA #8, p. 177)(emphasis added). On August 12, 2005, Martinez reported that the Sheriff's Department had "already secured her guns," that she was "unable to return to work," and that she would "have to go on disability or early retirement." *Id.* at 193-194.

While Judge Hayes decided in his February 25, 2009 Order that "the only causation conclusion that can be drawn from the record below is that [Martinez] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation,"²¹ this is simply croneous based on the initial medical records, which make no mention of the April 4, 2005 investigation and which clearly show the proximate causes of Martinez's mental breakdown were the death of her "cousin," her taking of Xanax due to the death of her cousin, and her abrupt cessation of Xanax. Not only does this show that Judge Hayes failed to perform a proper judicial review (i.e., determine whether there was any competent evidence to support the Commission's findings), but it also shows that he exceeded his authority by substituting his judgement for the judgement of the Commission as to the weight of the evidence and by making his own findings of fact.

Judge Hayes's February 25, 2009 Order was in clear violation of his appellate authority and scope of review under Section 1-23-380. "The court may not substitute its judgment for the

²⁰ The fact that the child's death is mentioned *after* the death of her cousin demonstrates which event Martinez considered to be more important.

²¹ Order, dated 2/25/2009, p. 17.

judgment of the agency as to the weight of the evidence on questions of fact.” S.C. Code Ann. §1-23-380(5).

B. The Circuit Court’s December 3, 2015 Order.

As outlined above, Judge Hayes’s first Order was reversed by the Court of Appeals, which held the Commission’s findings of fact were sufficient for judicial review and that substantial evidence supported the Commission’s findings that Martinez did not suffer an “unusual or extraordinary” condition of her particular employment.²² However, the Supreme Court subsequently vacated the Court of Appeals’ Order and remanded the case to the Commission on the grounds that the circuit court’s order was not a final judgment and therefore was not appealable pursuant to Bone.²³

On February 24, 2015, the Appellate Panel issued its Decision and Order and noted:

Because the Circuit Court found that the Commission’s Order lacked an “explicit statement of facts...sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by the evidence,” the Commission withdraws its previous Findings of Fact and hereby substitutes the following Findings of Fact for the Court’s consideration.

(SCWCC Decision & Order, dated 2/24/15, p. 5). The Appellate Panel again concluded that (1) Martinez failed to prove she encountered unusual or extraordinary work conditions in her employment on April 4, 2005 as compared to her normal conditions of employment and (2) Martinez failed to prove her mental health condition was proximately caused by the work incident on April 4, 2005. Id. at 45. In support of its decision denying compensability, the Appellate Panel made numerous findings of fact that showed Claimant was performing her ordinary job duties in an ordinary manner as a forensic investigator at the scene of the toddler’s death. While Martinez

²² Martinez v. Spartanburg Co., 394 S.C. 224, 715 S.E.2d 339 (Ct. App. 2011), *vacated*, 406 S.C. 532, 753 S.E.2d 436 (2014).

²³ Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E.2d 436 (2014) (citing Bone, 404 S.C. 67, 744 S.E.2d 552 (2013)).

emphasized the “thin blue line” relationship and contended her relationship with Officer Johnson, a former officer with the Spartanburg County Sheriff’s Department, transformed her employment condition on the day of the investigation into the extraordinary and unusual, the Appellate Panel disagreed. The Appellate Panel found that “Claimant only knew the toddler’s father in a ‘law enforcement way’ as a fellow officer who formerly worked for [Spartanburg County]” and that her “relationship” with Officer Johnson “on the date of the toddler’s death was, at most, as an acquaintance (or loosely defined ‘friend’) of a fellow law enforcement officer.” *Id.* at 13 & 15. In support of its decision, the Appellate Panel found:

- Officer Johnson only worked for Spartanburg County for approximately one year, and during that time, Martinez and Officer Johnson were never partners and worked in different zones;
- Officer Johnson left the Spartanburg County Sheriff’s Office 2 to 3 ½ years prior to the toddler’s death;
- Martinez and Officer Johnson were not close friends;
- Martinez never socialized with Officer Johnson or been to his house prior to the date of the toddler’s death;
- Martinez did not talk to/console Officer Johnson when she arrived on scene on April 4, 2005;
- Martinez had never met Officer Johnson’s child, and there was no evidence that Martinez had ever seen a picture of his child at any point during the child’s life; and
- Martinez was not a friend of Officer Johnson’s wife, and Martinez could not recall ever meeting Officer Johnson’s wife.

Id. at 12-15. The Appellate Panel specifically found that Martinez’s “fellow law enforcement officer relationship” with Officer Johnson was insufficient to make the investigation in question unusual or extraordinary.²⁴ *Id.* at 13.

²⁴ The Appellate Panel noted in its findings of fact that “Although a friendship (something more abiding or meaningful than simply seeing/exchanging pleasantries with someone at work) or a present--or perhaps even former--law enforcement partnership might produce a different outcome with regard to compensability, those circumstances are not applicable in the case before us.” *Id.* at 12-14.

With regard to causation, the Appellate Panel again concluded that Martinez failed to prove her mental health condition was proximately caused by the work incident on April 4, 2005 and that the proximate cause of her mental breakdown was multifactorial and included the death of her “cousin”, the taking of Xanax followed by abrupt cessation, her “overtaking” of Lortab, and her myriad of health issues. *Id.* at 45-46. In support of its decision regarding causation, the Appellate Panel issued over sixty detailed findings of fact. *Id.* at 15-44.

This case was again appealed to the Circuit Court and for a second time heard by Judge Hayes. On December 3, 2015, Judge Hayes issued his Order in this case, again reversing the Appellate Panel. Judge Hayes held that the Appellate Panel erred because it “did not include any of the quoted testimony supporting compensability” and “ignored the case law on compensability cited” in his previous Order. (Order, dated 12/3/2015, p. 15). However, the Appellate Panel specifically cited to three of the six cases Judge Hayes noted in his prior Order. Furthermore, in its discussion about mental injuries, the Appellate Panel cited the Supreme Court’s more recent decision in Bentley v. Spartanburg County²⁵, which was issued three years *after* Judge Hayes’s first Order. With regard to the testimony of the witnesses, the Appellate Panel clearly considered all the testimony and made several findings regarding the testimony of each or every witness who testified at the hearing. Judge Hayes’s decision to reverse because certain testimony was not quoted in the Appellate Panel’s Order is another example of him going beyond his scope of review and reweighing the evidence.

Importantly, Judge Hayes stated in his second Order, “The only witnesses who testified in this case were Deputy Martinez and Captain Denton, both of whom were law enforcement officers who were found to be credible.” (Order, dated 12/3/2015, p. 22). However, this was clearly

²⁵ 398 S.C. 418, 730 S.E.2d 296 (2012)

erroneous on two grounds. First, Martinez's father and mother also testified at the hearing before the single commissioner. Second, and most notably, the Appellate Panel did not find Martinez or Captain Denton credible as Judge Hayes asserted. Instead, the Appellate Panel found that credibility of Martinez's testimony was diminished by the fact that she attempted to downplay the effect of her "cousin's" death.²⁶ (See SCWCC Decision & Order, dated 2/24/2015, p. 41). The Appellate Panel further found Captain Denton had some interest in the compensability of Martinez's workers' compensation case because he had known Martinez through his sister for years before their law enforcement careers, he helped Martinez secure legal counsel for her workers' compensation claim, and Claimant described him in the medical records as part of her social support system and referred to him at the hearing as "Steve" until being asked by her attorney, "Who is Steve?" (*Id.* at p. 40). Judge Hayes's statement that Martinez and Captain Denton were both found to be credible was not only completely inaccurate, but also convincing proof that he exceeded his scope of review by making determinations on witness credibility. See *Shealy*, 341 S.C. 448, 535 S.E.2d 438 (2000).

Additionally, Judge Hayes determined that the Appellate Panel's "finding that Deputy Martinez did not have a law enforcement relationship with Officer Johnson is unsupported by the substantial evidence on the whole." (Order, dated 12/3/2015, p. 23). However, this is completely inaccurate as the Appellate Panel never found that Martinez and Officer Johnson did not have a law enforcement relationship. Instead, as previously outlined, the Appellate Panel made multiple findings regarding the nature of their relationship and specifically found that Martinez's "fellow law enforcement officer relationship" with Officer Johnson was insufficient to make the

²⁶ As previously outlined and discussed in the Petition, Martinez's "cousin" died two weeks after the investigation on April 4, 2005, and the medical records show that Martinez's psychological complaints were initially related to her "cousin's" death, not the toddler's death.

investigation in question unusual or extraordinary. Judge Hayes's decision to remand the case back to the Appellate Panel on an issue that Appellate Panel clearly addressed in its previous Order not only exceeded his scope of review, but also displays the results-oriented nature of his decisions and the unlawful efforts he has made to become the fact finder in this case.

Finally, in his December 3, 2015, Judge Hayes also reversed the Appellate Panel's new findings of fact regarding causation. *Id.* at 27. Judge Hayes held that the Appellate Panel did not have jurisdiction to reconsider the issue of causation because his previous Order established causation as a matter of law. *Id.* at 10. Judge Hayes remanded the case to Commission to enforce his "previous Order ruling that causation was established as a matter of law." *Id.* at 27. Petitioners contend that Judge Hayes's decision regarding causation in his December 3, 2015 was unlawful because (1) it was based on the improper judicial review he performed when issuing his original order on February 25, 2009 and (2) it was a continuation of his previous errors of improperly weighing of the evidence and making findings of fact.

C. The Circuit Court's July 15, 2019 Order.

After Petitioner's appeal to the Court of Appeals was dismissed, again pursuant to Bone, the case was remanded back to the Commission. On August 22, 2017, the Appellate Panel issued its third Decision and Order and specifically noted the instructions from Judge Hayes's December 3, 2015 Order:

In light of these instructions, and after carefully reconsidering and reviewing the whole record, including but not limited to the testimony of the only witnesses who testified at the Hearing, and cognizant of our role as fact finders, we are unable to reach any other factual conclusions than those that were made in our Decision and Order of February 24, 2015. Because the Circuit Court found that the original Full Commission Order was deficient and not sufficiently detailed in its findings to allow appellate review, the Appellate Panel has complied with the Court's directive. Therefore, based on the entire record, and specifically including the testimony of the witnesses who testified at the Hearing, we make, based on

the substantial evidence identified herein, the following findings of fact with our corrections and clarifications.

(SCWCC Decision & Order, dated 8/22/2017, p. 3). The Appellate Panel again concluded that (1) Martinez failed to prove she encountered unusual or extraordinary work conditions in her employment on April 4, 2005 as compared to her normal conditions of employment and (2) Martinez failed to prove her mental health condition was proximately caused by the work incident on April 4, 2005. Id.

On July 15, 2019, Judge Hayes issued his Amended Order asserting that the Appellate Panel's finding that Martinez had no law enforcement relationship with Officer Johnson must be reversed as unsupported by substantial evidence on the whole record and ordering that "the Commission on remand shall decide whether the tragic and horrific death of the 2 year old infant run over by her police officer father with whom [Martinez] had a law enforcement relationship made the crime scene investigation unusual and extraordinary." (Order, dated 7/15/2019, p. 10). In addition, Judge Hayes again ordered the Commission to delete all of its findings of fact regarding causation and to "substitute a ruling that the crime scene investigation performed by [Martinez] on April 4, 2005 caused [Martinez's] mental injury as a matter of law based on the unanimous opinions of the medical experts, including [Petitioner's] medical expert." Id. at 9.

Much like his second order, Petitioners contend that Judge Hayes's Order of July 15, 2019 was unlawful since it was based on the improper judicial review he performed when issuing his original order on February 25, 2009 and since it is a continuation of his improper weighing of the evidence and making findings of fact. Under the guise of stating that he has ruled on causation "as a matter of law" and instructing the Appellate Panel to *delete* its findings and substitute his ruling on causation, Judge Hayes is making his own findings of fact, which is clearly beyond his appellate review authority.

Judge Hayes has made it abundantly clear that, in his opinion, this case is compensable. On not one, not two, but now three separate occasions Judge Hayes has remanded the case to the Commission. Notably, in his most recent Order, filed July 15, 2019, Judge Hayes admonished the Appellate Panel against failing “to follow the law and comply with [his] Order,” and in what can only be viewed as an attempt to intimidate the Appellate Panel, Judge Hayes threatened the Appellate Panel with the use of his “powers... to punish for civil or criminal contempt...and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning” for the perceived failure by the Appellate Panel to conform with his Orders. Judge Hayes did not remand the claim for further proceedings, additional evidence, or even meaningful review. Instead, he has remanded the case to make a different ruling of law on the same facts that have been in evidence since a decision was first made by the Commission nearly thirteen years ago.

On its face, this posture and demand by Judge Hayes prejudicially precludes the Petitioners from any further meaningful re-review by the Appellate Panel. Given the threats from Judge Hayes, the Appellate Panel cannot be reasonably expected to render any decision contrary to Judge Hayes’s preordained and unlawful findings, despite its providence to do so. Judge Hayes’s declaration of criminal, civil, and professional peril against the individual members of the Appellate Panel if they fail to abrogate their statutory and ethical obligation to weigh the evidence and determine findings of fact, in favor of the Judge Hayes’s factual conclusions, has deprived the Petitioners of any reasonable opportunity for a fair review on remand. Threats coerce, and coercion compels.

Based on the foregoing, Petitioners assert that all three of Judge Hayes’s Orders reversing the Appellate Panel’s Decision and Orders violate Article V, Section 11 of the South Carolina

Constitution and Section 1-23-380 because Judge Hayes clearly exceeded his appellate jurisdiction and scope of review by reweighing the evidence, substituting his judgment for that of the Commission's, determine the credibility of witnesses, and making his own findings of fact.

II.

THE SUPREME COURT'S INTERPRETATION OF SECTION 1-23-390 IN BONE V. U.S. FOOD SERVICE, 404 S.C. 67, 744 S.E.2d 552 (2013) VIOLATES PETITIONER'S EQUAL PROTECTION AND DUE PROCESS RIGHTS.

A. The issues raised by Petitioners are issues of first impression for this Court.

In Bone, this Court held that an "order remanding the matter to the Commission for further proceedings does not constitute a final judgment as required by section 1-23-390 and, therefore, is not immediately appealable." 404 S.C. at 84, 744 S.E.2d at 562. While the Court in Bone addressed the applicability of the Administrative Procedures Act and interpreted the meaning of a "final judgment" as used in section 1-23-390, the Court did not consider the defendants' equal protection rights or their due process rights. As such, Petitioners believe the constitutional issues raised in the present case are issues of first impression for this Court.²⁷

B. Bone's application of Section 1-23-390 to Workers' Compensation Employers and Carriers violates their Equal Protection Right under the law.

Depending on the disposition of the issues by the Circuit Court, and Court of Appeals, Bone's application of Section 1-23-390 creates an impermissible distinction between claimants and defendants, which violates equal protection as provided by Article I, Section 3 of the South Carolina Constitution. First, equal protection is applicable in workers' compensation appellate proceedings. *See Howard v. Owen Steel Co.*, 303 S.C. 304, 400 S.E.2d 149 (1991) (analyzing

²⁷ Assuming arguendo that Bone's interpretation of Section 1-23-390 is not unconstitutional on its face, its application to Petitioners in the present case violates Petitioners' due process and equal protection rights provided by Article I, Section 22 of the South Carolina Constitution.

appeals to the Full Commission under equal protection). Therefore, Petitioners' equal protection rights extend to the current proceeding.

The equal protection analysis has been set forth in multiple cases:

The equal protection clauses of our federal and state constitutions declare that no person shall be denied the equal protection of the laws. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. Equal protection "requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

Melcod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012) (Beatty, J., dissenting). "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013).

In this claim, Bone requires that opposing litigants in the *same* litigation receive disparate treatment in a workers' compensation appeal. Specifically, in cases in which compensability is disputed, such as the instant case, Bone would *allow* a claimant's appeal when compensability is denied by the Court, but would *deny* defendants an appeal when compensability is decided in the claimant's favor. This inequity is the logical progression of Bone's requirement that the "final judgment" required by Section 1-23-390 be a "final judgment disposing of the *entirety of the action*." Bone, 404 S.C. at 78, 744 S.E.2d at 559.

As contemplated by Bone, workers' compensation claims often require multiple hearings to determine issues and entitlement to certain benefits: compensability, temporary disability, permanent disability, and medical treatment. This Court has recognized that "workers' compensation benefits accrue along a time continuum." Curiel v. Envtl. Mgmt. Services, 376 S.C. 23, 655 S.E.2d 482 (2007). Because of the nature of the benefits available, defining a final judgment as requiring the disposal of the whole action *impermissibly requires* the government to treat a defendant in the claim differently than a claimant. To illustrate, consider the following

table in which the defendants to a workers' compensation claim dispute compensability, but the claimant asserts entitlement to benefits.²⁸ Assume that there is an injury, but the defendants assert a legal defense, such as in the instant case²⁹:

Deciding Body	Standard of Review	Prevailing Party	All issues Decided	Can Aggrieved Party Appeal/ Petition for Review?
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes
Circuit Court	Substantial Evidence/ Error of Law	Defendants	Yes	Yes
Court of Appeals	Substantial Evidence/ Error of Law	Defendants	Yes	Yes

In the above example, where the defendants prevail at every level, the claimant has every chance to prove the claim, and then to have the claim reviewed by the next reviewing body for errors of law. No one would dispute that the fairness of the judicial review as set forth in the above table. However, consider the following table, in which the defendants initially prevail on their legal argument that the claim is not compensable, but the Circuit Court remands, and, in doing so, makes an error of law:

²⁸ The Tables illustrate the prior law, which applies in this case, that required an appeal from the Commission to be made first to the circuit court. Such appeals are now directed to the Court of Appeals for all injuries occurring on or after July 1, 2007. S.C. Code Ann. § 42-17-60 (Supp. 2012).

²⁹ Petitioners (1) deny Martinez's mental injury arose out of unusual or extraordinary conditions of her employment and (2) deny the investigation in question was the proximate cause of her mental injury.

Deciding Body	Standard of Review	Prevailing Party	All issues Decided	Can Aggrieved Party Appeal/ Petition for Review?
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes
Circuit Court	Substantial Evidence/ Error of Law	Claimant	No	No
Court of Appeals	Substantial Evidence/ Error of Law			

Indeed, the second chart represents what happened in this case. Petitioners now assert that the Circuit Court, sitting as an appellate court, has made several errors of law. However, even if the Circuit Court has in fact made a clear error of law in Martinez’s favor, because of the nature of the proceeding, Bone deprives Petitioners of a *reasonably timely* appeal. Timeliness of an appeal notwithstanding, when Petitioners are required to provide medical treatment and disability payments until all issues are finally decided by the fact finder, significant deprivation of property arguments arise. (*See Due Process Argument, infra.*) Therefore, Bone’s interpretation of Section 1-23-390 essentially requires disparate treatment of litigants to the same workers’ compensation claim.

This disparate treatment impermissibly infringes on a fundamental right guaranteed by the South Carolina Constitution: the right to access to the Courts. Article I, Section 9 of the South Carolina Constitution provides that “All courts shall be public, and every person shall have speedy

remedy therein for wrongs sustained.” In Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922), the Supreme Court recognized that the right to a speedy remedy includes the right of a speedy appeal.³⁰

The inequity of appealability in this case offends the constitutional guarantee in two ways. First, Article I, Section 9 guarantees the right to “every person.” Therefore, if the right to court access is guaranteed to every person, it is guaranteed to every person equally. The inequity of the availability of the appeal cannot stand. Second, because the speedy remedy requires a speedy appeal, the equity of the parties should require an appeal of equal speed for both parties. A claimant has access to an immediate appeal; however, should the current construction of Bone stand, then there is absolutely no speedy remedy or appeal for Petitioners in the instant case. Petitioners could be subject to provide disability benefits and medical treatment until the time of maximum medical improvement and a hearing before the Commission to determine all issues. Only at that time are Petitioners able to argue that the claim is not compensable for legal reasons that were readily available, and able to be litigated, prior to Petitioner’s provision of benefits.

Given that disparate treatment required by Bone implicates a constitutional right of access to the Courts, the appropriate equal protection analysis is strict scrutiny, and the Bone construction of Section 1-23-390 cannot stand. Legislation restricting or impairing a fundamental right “is subject to ‘strict scrutiny’ in determining its constitutionality.” In re Treatment and Care of Luckabaugh, 568 S.E.2d 338, 351 S.C. 122 (2002) (citing Hamilton v. Board of Trustees, 282 S.C. 519, 319 S.E.2d 717 (Ct. App. 1984)). “To survive strict scrutiny the Act must meet a compelling state interest and be narrowly tailored to effectuate that interest.” Id. In the instant case, there is no *compelling* state interest. Indeed, the primary discernable policy interest identified in Bone is

³⁰ “A lax observance of the very reasonable regulations prescribed by statute and the rules of court for perfecting appeals can but lead to unnecessary delay in the final disposition of causes in our courts, and thus work infringement of the constitutional guaranty (Section 15, Art 1, Const. 1895) that ‘every person shall have speedy remedy therein for wrongs sustained.’” Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922).

“undue delay and waste of judicial resources caused by interlocutory appeals.” Conserving judicial resources cannot be compared to a *compelling* interest such as national security, protecting the lives of citizens from threats of harm, etc. This matter of preference is not “compelling” when balanced with defendants’ right to have the same appeal right as a claimant. A one-sided bar to appeal is insufficiently tailored to accomplish the stated goal of preventing “undue delay and waste of judicial resources” when there is no data or legislative history indicating that a contemporaneous appeal actually wastes judicial resources. Furthermore, as Justice Hearn specifically noted in her dissent in Bone, “the interests of judicial economy demand a rejection of the majority’s view. Taken to its logical conclusion, the majority’s position could have cases trapped in a cycle of remands for year.” Bone, 404 S.C. at 92, 744 S.E.2d at 566. That is exactly what has happened in the present case. Despite over fourteen years having passed since the date of the alleged accident, there is still no decision on compensability. Due to the application of Bone, this case has since been stuck in a perpetual cycle of remands, with no end in sight. Accordingly, Bone’s interpretation of Section 1-23-390, and its application to Petitioners, impermissibly burdens the constitutional right of Petitioners to a speedy appeal.

Moreover, even absent the protection in the South Carolina Constitution for access to the courts, any order denying the right to appeal and subjecting Petitioners to an undetermined period of benefit payments burdens a fundamental property right:

[I]t is arguable that this case should be analyzed under the strict scrutiny test as the reduction of a parent’s income clearly impinges upon a **fundamental property right**. See Wingfield v. S.C. Tax Comm’n, 147 S.C. 116, 152, 144 S.E. 846, 858 (1928) (“The court appreciates the earnest plea that every person is entitled to the enjoyment of life, liberty, and property, and to the equal protection of the laws guaranteed by the federal and state Constitutions, and will protect and safeguard these fundamental rights to the extent, if necessary, of declaring invalid any legislative enactment clearly shown to be in violation of them.”).

McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012) (Beatty, J., dissenting) (emphasis added).

The application of Bone in the present case will clearly deprive Petitioners of a fundamental property right. Consider the following:

- Petitioners prevailed on compensability before the Commission, but the Commission's decision was reversed by the Circuit Court;
- Under Bone, Petitioners are without recourse for immediate appeal, and the case is remanded to the Commission, which will have little choice but to adopt the Circuit Court's improper findings of fact and award benefits to Martinez;
- Petitioners begin paying temporary total disability benefits at a compensation rate of \$462.92, and provide Martinez with psychiatric treatment.
- It takes 2.5 years and \$60,000 in medical care and prescription drugs costs to attain maximum medical improvement.
- Permanency is determined, and future medical is ordered.
- The case works its way to the Supreme Court, and shortly before oral argument, Petitioners pay the 500th week of disability, totaling \$231,460.00 (with medical treatment Appellants have now spent close to \$300,000.00).
- The Supreme Court then decides that Petitioners' legal case against compensability has merit and rule that the case is not compensable as a matter of law.

Assuming this case unfolds as above, Martinez will have received a benefit of nearly \$300,000, to which she was never entitled. That certainly implicates a significant property right, and, practically, there is no way for Petitioners to recover this money through the workers' compensation claim that gave rise to the requirement to pay it. Bone would reason that the Petitioners' \$300,000 loss is merely the price of using judicial resources wisely; however, that outcome is untenable.

Fundamental rights aside, Bone cannot pass a rational basis test. "To prevail under the rational basis standard, a movant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose." Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013). Petitioners assert that there is *no legitimate* purpose in providing vastly different appeal rights to

claimants and defendants in the *same* litigation. Other cases discussing rational basis review discuss issues such as insurance required to drive on public roadways,³¹ regulating relationships between physicians and physical therapists,³² and regulation of on-site alcohol sales and consumption on a commercial premises.³³ As a generalization, the legitimate purpose test broadly relates to the state's police power in protecting its citizens and promoting public order. Petitioners assert there is *no legitimate* interest in parties to the same litigation having different appeal rights, as the appeal rights between two parties have no discernable impact on the public as a whole.

Bone states that depriving defendants of an immediate right to appeal may improve judicial economy by reducing appeals in individual cases. However, this evidentiary basis for this assertion is far from clear. The defendants shoulder the *entire* burden of this scheme, and, in a case such as the present case, the state would essentially facilitate a transfer of assets from defendants to a claimant, without qualification of whether and how much this scheme truly impacts judicial economy. Furthermore, the Courts should not be in a position to limit appeals based on an *outcome* as they decide, as this necessarily brings into question the neutrality of the Court in a manner that is not proper. Accordingly, there is no legitimate state interest, and this statutory interpretation fails a rational basis analysis. Bone's interpretation of Section 1-23-390 offends equal protection and cannot be saved.

C. Bone's Application of Section 1-23-390 Violates the Due Process Rights of Workers' Compensation Employers and Carriers.

Article I, Section 22 of the South Carolina Constitution provides certain rights regarding procedures before administrative bodies:

³¹ Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978) (finding contributory negligence statute failed rational basis review and impermissibly classified injured parties).

³² Sloan v. S.C. Bd. of Physical Therapy Examiner, 636 S.E.2d 598, 370 S.C. 452 (2006).

³³ Denene, Inc. v. City of Charleston, 359 S.C. 85, 596 S.E.2d 917 (2004)

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he **shall have in all such instances the right to judicial review.**

(emphasis added). Judicial review of a workers' compensation proceeding is a constitutional right in South Carolina. The rights provided under Article I, Section 22 extend to the limits of due process:

[W]hen discussing Article I, Section 22, we have consistently indicated that the protections provided under this section are the equivalent of those afforded by the Due Process Clause of our state and federal Constitutions.

S.C. Coastal Conservation League v. S.C. Dep't. of Health and Env'tl. Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). Due process necessarily includes the right to *meaningful* judicial review:

The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to **meaningful judicial review.**

Dangerfield v. State, 376 S.C. 176, 656 S.E.2d 352 (2008) (emphasis added). No South Carolina case has clearly defined what particular process is required for "meaningful" judicial review, but other cases discussing "meaningful" point to the *temporal* nature of due process. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" S.C. Nat. Bank v. Central Carolina Livestock Market, Inc., 345 S.E.2d 485, 289 S.C. 309 (1985) (citing Armstrong v. Manzo, 380 U.S. 545 (1965)). In Armstrong, a father's parental rights were terminated without any notice to him, although his whereabouts were easily ascertainable. When the subsequent adoption was finalized, and the natural father sought to set

aside the proceedings, he had multiple burdens of proof placed on him at that point that would not have been placed on him had proper notice been give. The Supreme Court of the United States noted that “A fundamental requirement of due process is ‘the opportunity to be heard.’ It is an opportunity which must be granted at a meaningful time and in a meaningful manner.” *Armstrong*, 380 U.S. at 552 (internal citations omitted). The Supreme Court held that the father’s due process rights were violated because he was not provided timely notice and as a result, additional burdens were placed on him. *Id.* at 551.

In *S.C. Dep’t of Social Services v. Wilson*, 352 S.C. 445, 574 S.E.2d 730 (2002), there was a litigated allegation of child abuse against the minor’s father. The minor requested to testify outside of the presence of the father, over the objection of the father. The father was excluded from the courtroom but could still hear the testimony and had the opportunity to briefly conference with his lawyer prior to cross-examination. However, this Court found that this process did not comport with due process:

[I]f the child testifies at an intervention proceeding, the due process right to confrontation requires the child testify in the presence of her parent/defendant unless special circumstances are established. Wilson’s ability to hear the minor’s testimony, discuss her testimony with counsel, and cross-examine her were insufficient to satisfy due process without the determination the minor would be traumatized by testifying in her father’s presence. As conceded by DSS at oral argument, the minor was the key witness against Wilson and she may have been less credible if she had testified in his presence. Because Wilson did not have the opportunity to be heard in a meaningful manner, his due process right was violated.

Id. 352 S.C. at 458, 574 S.E.2d 730.

Armstrong illustrates meaningful (temporal) notice, and *Wilson* illustrates meaningful (temporal) opportunity to be heard. Therefore, the right to meaningful judicial review must include contemporaneity. This temporal requirement is reflected in Section 1-23-380, the companion statute of Section 1-23-390: “A preliminary, procedural, or intermediate agency action or ruling is

immediately reviewable if review of the final agency decision would not provide an adequate remedy.” S.C. Code Ann. 1-23-380. Looking at the plain language of 1-23-380, the provision for immediate appeal is provided when an appeal after the passage of time is not adequate. The policy embedded in Section 1-23-380 is what Petitioners’ seek here.

Petitioners are further burdened because the application of the standard of review changes. In workers’ compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court’s review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). In the present case, the Appellate Panel issued its final order concluding that Martinez did not sustain a compensable mental injury under the Act and that the proximate cause of her mental condition was not the investigation in question, but rather the subsequent death of a relative. Since the Appellate Panel’s Order finally decided compensability, the issue on appeal should be whether substantial evidence supports the Commission’s findings that Martinez did not sustain a compensable injury. However, if the appeal in this claim is deferred and the Appellate Panel is forced to adopt the unlawful “findings” of the Circuit Court and issue an Order finding the claim compensable, then the issue on appeal in the future becomes whether substantial evidence supports the Commission’s findings that Martinez sustained a compensable injury. This clearly places an additional burden on Petitioners. See Tiller v. Nat’l Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999)(the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence).

Bone's interpretation of Section 1-23-390 violates Petitioner's due process because it allows for potential of forcing them to pay benefits over the course of several years before having a meaningful opportunity to be heard on appeal and because it changes the ultimate question on appeal once the case is finally before an appellate court.

D. Given the perpetual cycle of remands, Petitioners are left without an adequate remedy on appeal from a final judgement under Section 1-23-390.

In reality, there is a final decision in this case. Despite Judge Hayes's continued reversals and remands, which Petitioner's maintain were unlawful, the Appellate Panel has repeatedly insisted that it has complied with the Circuit Court's directive. The Appellate Panel specifically noted in its August 22, 2017 Decision and Order that "cognizant of our role as fact finders, we are unable to reach any other factual conclusions than those that were made in our Decision and Order for February 24th, 2015." (SCWCC Decision & Order, dated 8/22/2017, p. 3). At this point, the parties are trapped in a perpetual cycle of remands. By continually remanding a case back to the Commission, a circuit court judge, who wants a denied case found compensable, can set an impenetrable bar to defendants having immediate access to a higher court for review of the lower court's improper appellate review. That is exactly what has happened in this case. The case will be subjected to endless remands by the Circuit Court until the Appellate Panel finally succumbs to the Circuit Court's wishes.

This case is analogous to this Court's recent decision in Russell v. Wal-Mart Stores, Inc., Op. No. 27875 (S.C. Sup. Ct. filed April 3, 2019). In Russell, the appellate panel remanded the claimant's change of condition claim to a single commissioner for a third time. The claimant appealed to the Court of Appeals, and in an unpublished decision, the Court of Appeals held the appellate panel's remand order was not immediately appealable and dismissed the appeal. The claimant then filed a petition for writ of certiorari, which was granted. This Court reiterated that

“One primary goal of the Workers’ Compensation Act is to provide quick and efficient resolution of work-related injury claims so neither employers nor employees become bogged down in complicated and protracted litigation.” This Court determined that “the commission’s unnecessary delays and repeated remands over the almost eight years since Russell filed her change of condition claim frustrated the goals of the Workers’ Compensation Act.” This Court held the Commission’s unreasonable delay in making a final decision left the claimant without an adequate remedy on appeal from a final decision under Section 1-23-380, and as such, held that the appellate panel’s remand order was immediately appealable.

Petitioners acknowledge that Russell dealt with an appeal under Section 1-23-380 and remands by the Commission, and not Section 1-23-390 and remands by the circuit court. However, Petitioners contend that the same reasoning applied in Russell should be applied to the present case and any other case where an appeal may fall under Section 1-23-390. If continuous remands and appeals over an eight-year period in Russell frustrated the goals of the Act, then it is more than obvious that those same goals are frustrated in the present case. It is unconscionable that a single circuit court judge can continuously break the chain of appealability, leaving Petitioners with no recourse or method to appeal.

Further, while the Supreme Court held that the defendants in Bone had an “adequate remedy” because they could raise the issue of compensability on appeal from a final award from the Commission, that remedy is simply non-existent in this case. In the present case, despite the Circuit Court’s attempts to unilaterally find the case compensable, the Appellate Panel has consistently held, and has made extremely detailed findings supporting its decision, that it does not believe this case is compensable. This is clearly the Appellate Panel’s final decision/judgment. The only adequate remedy Petitioners have to challenge the Circuit Court’s improper appellate

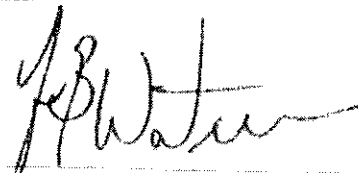
review is to appeal the case to a higher court. Failure to allow such appeal would be a clear violation of Petitioners' due process rights.

Petitioners assert that Bone's interpretation and application of Section 1-23-390 violates the due process and equal protection rights of workers' compensation defendants as a whole. However, assuming arguendo that Bone's interpretation of Section 1-23-390 is not unconstitutional on its face, its application to Petitioners in the present case violates Petitioners' due process and equal protection rights provided by Article I, Section 22 of the South Carolina Constitution. Furthermore, the decision in Bone, and its application in this case, has locked this case into a continuous cycle of remands, prevented Petitioners - as well as Respondent - from obtaining any type of finality, and spoiled any possible interest in judicial economy. The only remedy available to the parties is a review by this Court.

CONCLUSION

For the reasons stated above, Petitioners respectfully ask the Court to grant their Petition, review all of the prior Orders of the Circuit Court and Appellate Panel, permit oral arguments, reconsider this Court's previous decision in Bone and its application to the present case, and issue a decision finding: (1) that the Circuit Court has repeatedly exceed his scope of review, (2) that these errors nullify the Circuit Court's prior Orders, and (3) that substantial evidence supports the Commission's consistent decision to deny the claim.

BY:



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Attorneys for Petitioners

Date: August 14, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-3726

Raquel Martinez,

Respondent,

v.

Spartanburg County and
S.C. Association of Counties
Self-Insurance Fund,

Petitioners.

NOTICE

Pursuant to Rule 245(c), SCACR, Respondent has twenty (20) days from the date of service to serve and file a return to the Petition.

August 14, 2019



L. Brenn Watson
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Greenville, South Carolina 29607
(864) 527-3292
Attorney for Appellants

Raquel Martinez v. Spartanburg County
Appellate Case No. 2019-001382
Joint Motion for Stay and Suspension of Briefing Schedule

Attachment C

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL J. JORDAN
BENJAMIN W. AKERY



CATHERINE D. MEEHAN
KELLY M. ALFREDS
E. ELLIOTTE QUINN, IV
TAYLOR L. GROOMS
CHARLES S. GOLDBERG (1933-2019)
HUGO M. SPITZ (1927-2018)
IRVING STEINBERG (1902-1980)

61 Broad Street | P.O. Box 9 | Charleston | SC | 29401 | (843) 720-2800 | (843) 722-1190 fax | steinberglawfirm.com

Friday, August 23, 2019

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

Re: Raquel Martinez v. Spartanburg County, et al.
Appellate Case No. 2019-001382

Dear Judge Shearouse:

For filing enclosed please find six (6) copies of respondent's Return for Petition for Certiorari and a Certificate of service on all parties of records.

With kindest regards, I am

Very truly yours,

J. Kevin Holmes
Email: kholmes@steinberglawfirm.com
Direct Fax: (843) 722-1190

JKH/gmh
Enclosures

cc: L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
Jenny Abbott Kitchings, Clerk, Court of Appeals
Chadwick D. Pye, Esquire
David T. Pearlman, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No.: 2019-001382

Raquel Martinez,

Respondent,

—v.—

Spartanburg County and SC Association
of Counties Self-Insurance Fund,

Petitioners.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

The Petitioner filed a Notice of Intent in the Court of Appeals on August 12, 2019 and a Petition for a Writ of Certiorari to this Court on August 14, 2019. The Respondent was uncertain as to the nature of the Petition. Upon consultation, the Respondent confirmed the Petition seeks to have this Court accept the matter in its original jurisdiction under Rule 245(c), SCACR.¹ The Respondent opposes the Petition and requests it be denied.

- I. **Rule 245(c), SCACR, requires a party seeking to have the Supreme Court entertain an action in its original jurisdiction must file a complaint setting forth the claim for relief in the manner specified in**

¹ The Petition asserts jurisdiction under Article V, Section 5 of the South Carolina Constitution and *S.C. Code Anno.*, § 14-3-310 (1976) and contains a Rule 245(c), SCACR, notice advising the Respondent she has 20 days to respond. See also: Article V, Section 8 of the South Carolina Constitution.

Rule 8, SCRCP. The Petition does not include a complaint complying with Rule 8 and should be denied.

The Respondent opposes the Petition because the Petition does not contain a complaint setting forth the claim for relief in the manner specified by Rule 8, SCRCP. Rule 8, SCRCP requires a short and plain statement of the grounds, including the facts and statutes upon the court's jurisdiction depends, showing the Petitioner is entitled to relief, and a prayer for judgment. While this information may be gleaned from the forty page Petition, they are neither set forth in short and plain statements nor presented in a manner to which the Respondent can respond or raise defenses to. The Petition does not comply with Rule 245(c), SCACR, and Rule 8, SCRCP, and should be dismissed.

- II. **Rule 245(a) provides the Supreme Court will not entertain an action in its original when the matter can be determined in a lower court. The Order challenged remanded the claim to the Commission for further proceedings consistent with the Circuit Court's Order. The Order interlocutory and the Petition should be denied.**

Judicial review of the decisions of administrative agencies is guaranteed by Article I, Section 22 of the South Carolina Constitution. The Respondent sought judicial review when the Commission denied her claim. As her claim arose prior to the amendment of the Workers' Compensation Act, her petition for judicial review was heard before the Circuit Court. *See*: S.C. Code Anno., § 42-17-60, as amended July 1, 2007. The Circuit Court reversed the Appellate Panel but the Petitioner appealed his decision. This Court ruled the Circuit Court's Order was interlocutory and remanded the matter to Appellate Panel. *See: Martinez v. Spartanburg County*, 406 S.C. 532,

753 S.E.2d 430 (2014) citing *Bone v. U.S. Food Service*, 404 S.C. 67 744 S.E.2d 552 (2013).

On remand the Commission had limited jurisdiction. “After a remittitur is sent down from an appellate court, the [agency] acquires jurisdiction to enforce the judgement and take any action consistent with the appellate court ruling.” *Mullen v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993); *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994). Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated, even under the guise of a different form. *Ackerman v. MacMillian*, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996), 5 C.J.S., Appeal and Error, § 975(a) (1993). That is not what happened.

As found by the Circuit Court Judge, on remand, “[t]he Appellate Panel proceeded to disregard this Court’s Order and issued a new forty-six page Decision and Order on December 15, 2014 which, under the guise of making new findings of fact to facilitate judicial review, reconsidered causation decided by the Court as a matter of law, reversed this Court’s ruling on causation, again omitted the testimony of the only witnesses who testified, and found the Petitioner and Officer [Johnson] did not have law enforcement relationship.” Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, p. 4, filed July 15, 2019. The Circuit Court again reversed and remanded the claim to the Appellate Panel with specific instructions. The Petitioner again appealed delaying the remand. The Court of Appeals dismissed the appeal as interlocutory. The Petitioner filed a Petition for Writ of Certiorari that was

withdrawn, further delaying the claim. Finally, the claim was finally back before the Appellate Panel.

As found by the Circuit Court Judge on remand the Appellate Panel again disregarded the Circuit Court's Order:

Despite the Circuit Court's clear and specific instructions, the Appellate Panel again disregarded this Court's Order for a second time and reissued an almost identical Decision and Order including the same findings on causation, again ignored the testimony of the witnesses who testified quoted by this Court, made the same flawed finding Deputy Martinez had no law enforcement relationship with Officer Johnson this Court found was clearly erroneous based on the substantial evidence in the whole record, and failed to make a ruling whether the horrific death of the infant child run over by her law enforcement father with whom Deputy Martinez has a law enforcement relation made the crime scene investigation extraordinary and unusual.

Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, p. 5, filed July 15, 2019.

The frustrated Circuit Court Judge protested, "[The Respondent] has been denied due process of law, denied a final Decision and Order of the Commission that complies with the previous Orders of this Court for eight and half years." Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, pp. 5 – 6, filed July 15, 2019. The Circuit

Court Judge lamented:

This Court is reluctant to remand this claim for a third time to the Commission which has disregarded its previous Orders. By the same token, this Court is reluctant to decide the contested issues because that could lead an Appellate Court finding this Court overstepped its jurisdiction. Precedent explains that whether an accident is compensable is a question of law when the facts are not in dispute. *Davaut v. University of S.C.*, 418 S.C. 627, 632, 795 S.E.2d 678, 681 (2016). While the Court believes a court could decide, as a matter of law, whether it is unusual and extraordinary for a police to investigate the horrific death of a two year old infant run over by her police officer father with whom the

investigator had a law enforcement relationship, the Commission has never attempted to answer this question and the Court believes it is appropriate for the Commission to answer this question.

Amended Order of Judge Hayes, Case No.: 2017-CP-42-3726, p. 8, filed July 15, 2019.

The Circuit Court cautioned the Appellate Panel:

This should not be interpreted to suggest this Court is powerless to enforce compliance with its Order or will be reluctant to do so if the Commission again refuses to comply with its Order. Those powers include, but are not limited to, the power to punish for civil contempt, to award costs including attorney's fees to the [Respondent], and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning. The Court admonishes the Commission that further unnecessary delay complying with this Court's Order ... will not be tolerated, will be considered intentional and willful, and will be dealt with accordingly.

The Notice of Intent and this Petition for a Writ of Certiorari have again delayed a final decision and here we are over ten years later with no end in sight.

Rule 245, SCACR, provides, "The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance..." The matter the Petition asks this Court action in its original jurisdiction can still be decided by a lower court. The Order is interlocutory and the Petition should be denied.

III. Asking the Supreme Court to take a matter into its original jurisdiction is an extraordinary writ. It is axiomatic such a writ should be sought by a party whose rights have been prejudiced. The Petition should be denied because the Petitioner benefitted from, participated in, and condoned the unwarranted conduct by the Appellate Panel.

The Respondent could not agree more with “justice delayed is justice denied,” especially when the delay is caused by those whose duty it is to enforce the law. The public interest involved in this matter, however, is not the public interest suggested by the Petitioner. Injured workers have the right to receive quick and efficient resolution of their work-related injury claims. *Russell v. Wal-Mart Stores, Inc.*, 426 S.C. 281, 826 S.E.2d 863 (2019) citing *Peay v. U.S. Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993). More importantly, there is a public interest in fundamental due process guaranteed by Article 1, Section 3, the separation of powers guaranteed by Article 1, Section 8, the right to a speedy remedy in the Courts guaranteed by Article 1, Section 9, and the right to judicial review guaranteed by Article 1, Section 22 of the South Carolina Constitution.

When the Respondent first prevailed on judicial review, over ten years ago, she sought judicial review. She prevailed and her claim was remanded to the Commission for further proceedings consistent with the Circuit Court’s Order. When the remand was heard before the Appellate Panel, the following colloquy took place between Commissioner Susan Barden and the Petitioner’s former attorney:

MR. KALE: Okay. May it please the panel. First, let me address Judge Hayes’ order and what it requires or implies. And I would cite you to the very bottom sentence of page nine. He says, this court is left to speculate if the proper analysis was applied by the commission and whether the factual conclusions upon which the law was applied has a substantial base in the record. If he says that the record is not sufficient findings of fact that would allow him to do a judicial review, then how can we [accept] all of this other analysis as being a proper judicial review when he says he can’t make it. And that’s what I have a problem with, with Judge Hayes. Judge Hayes, I think, is clear from his order what he wanted to do in this case.

COMMISSIONER BARDEN: Right, right.

MR. KALE: And the fact is he's having his cake and eating it too.

COMMISSIONER BARDEN: By saying he has to speculate or he can only speculate, but then ---

MR. KALE: And then he tells us -- he's supposedly telling the commission where they went wrong. So I think it's very clear from his order that the remand is to get sufficient findings of fact that would support judicial review. And is not any kind of mandate that you have follow his -- anything else that's in his order. But let me also, if I may --

COMMISSIONER BARDEN: Do you think that we are bound by his -- they're a couple of things in here I don't ---

MR. KALE: I do not think you're bound by anything he puts in the order, because he has already prefaced that he's remanding it because are insufficient findings of fact, and he would have to speculate as to what findings of the commission were and what the conclusions of the commissioner were. **So I don't think that you're bound by anything that is in his order.** (*Emphasis added*)

This Court taking a matters in its original jurisdiction is an extraordinary writ that should be granted only on the grounds of a special emergency. It seems axiomatic such a petition should be brought by a party whose rights have been prejudiced. The Petitioner's rights have been prejudiced. They have not been required to pay compensation or provide medical treatment. The Petitioner is not facing an emergency. It is the members of the Commission who have repeatedly disregarded the rulings of the Circuit Court who face being held in contempt if they persist with their unwarranted conduct.

After this Court ruled the Circuit Court's Order was interlocutory and remanded the claim to the Commission in *Martinez v. Spartanburg County, supra.*, the Petitioner again filed a meritless appeal to the Court of Appeals, that was dismissed as interlocutory, and a Petition for Certiorari to this Court, that was withdrawn further delaying a final decision. The Petition should be denied because

the Petitioner lacks standing to complain of unwarranted conduct they benefitted from, participated in, and condoned.

- IV. **In a recent decision, this Court ruled unwarranted delay in making a final decision in a workers' compensation case requires immediate review to avoid the denial of an adequate remedy. The Commission's repeated refusal to conduct proceedings on remand consistent with the Circuit Court's Order has been unwarranted. In the alternative to remanding the claim to Commission for a fourth time, this Court should consider transferring jurisdiction of the appeal filed by the Petitioner in the Court of Appeals to itself to prevent further delay of an adequate remedy.**

Heretofore, the Petitioner and the Circuit Court have felt constrained to seek a final decision from Commission because of *Bone v. U.S. Food Service, supra.* Since appearing before this Court five years ago, the Petitioner and the Circuit Court have repeatedly tried to get the Commission to comply with the constitution, the case law, and the Circuit Court's decision to no avail. In the recent case of *Russell v. Wal-Mart Stores, Inc., supra.*, however, this Court ruled, "We find the remand order is immediately appealable because the commission's unwarranted delay in making a final decision requires immediate review to avoid leaving the appellant with no adequate remedy on an appeal from a final decision." *Id.*, 426 S.C. at 283. The Court explained:

... this Court has struggled to foster quick and efficient resolutions of work-related injury claims by discouraging the commission from making repeated, unnecessary remands. In *Bone v. U.S. Food Service*, we cited "lingering confusion in this area [of immediate appealability] that has arisen after the passage of the Administrative Procedures Act" as a basis for granting certiorari to review the court of appeals' dismissal of an interlocutory appeal... Ultimately, we denied an immediate appeal and permitted a remand for a new hearing, ... but we highlighted the prejudice employers and employees may suffer from delaying

appeal of interlocutory orders until after final judgment... The dissent addressed the problem even more directly. Justice Hearn wrote, "Moreover, the interests of judicial economy demand a rejection of the majority's view. Taken to its logical conclusion, the majority's position could have cases trapped in a cycle of remands for years." (citations omitted).

Id., 426 S.C. at 286 In *Russell* the delay was almost 8 years. In the present case it has been 10 years with no end in sight. Like the Commission's action in *Russell*, the Commission's actions in the present case have demonstrated a willful and intentional disregard of the decisions of the Appellate Court. It is time for this Court to take action.

As an alternative to this Court taking the matter in its original jurisdiction, this Court can take jurisdiction under Rule 204(b), SCACR, of the Notice of Intent filed in the Court of Appeals on August 12, 2019. This Court can decide the issues under *S. C. Code Anno*, § 1-23-380(5), the Administrative Procedures Act, without infringing on the Commission's fact finding duties:

The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decision are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

When the evidence gives rise to only one reasonable inference, the question becomes one for the court to decide. *Smith v. Union Bleachery/Cone Mills*, 276 S.C.454, 280

S.E.2d 52 (1981); *Lorrick v. S.C. Electric & Gas Co.* 245 S.C. 513, 141 S.E.2d 662 (1965). The Court can affirm the Circuit Court's ruling causation was established based upon the unanimous opinions of the medical experts, including the Respondent's medical expert, as a matter of law. The Court can strike the Commission's new findings of fact 30 to 90 and ruling of law 3 made on remand reversing the Circuit Court as having been made in violation of constitutional or statutory provision, in excess of the authority of the Commission, or upon an unlawful procedure. This Court can decide whether the Commission's refusal to consider the testimony of the only witnesses who testified as to the conditions of the Respondent's employment quoted by the Circuit Court on remand was arbitrary and capricious or constituted an abuse of discretion. This Court can decide whether the Commission's findings on remand the Respondent did not have a law enforcement relationship with the father of the crushed infant were supported by the substantial evidence on the whole record. This Court can decide whether the tragic and horrific death of a two year old infant smashed like a watermelon when run over by her police officer father with whom the Respondent had a law enforcement relationship made the crime scene investigation performed by the Respondent unusual and extraordinary as a matter of law.

The Commission has had five years to answer this question since the last time this case was before the Court. Their failure to comply with the Circuit Court's Order has forfeited they had to exclusively decide this issue. By assuming jurisdiction of the appeal filed in the Court of Appeals, this Court will have the opportunity to end these endless appeals and remands. If the Court finds the Respondent's injury was

compensable, it can remand the claim to the Commission to perform the ministerial task of awarding benefits under the Act. And, finally, assuming jurisdiction of the appeal will give the Court an opportunity to take whatever direct action it deems necessary and proper to prevent members of the Commission from willfully and intentionally refusing to follow the decisions of Appellate Courts in the future.

Respectfully Submitted,



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and

Chadwick D. Pye
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Attorneys for the Respondent

Charleston, South Carolina

23 day of August, 2019.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2019-001382

Raquel Martinez,

Respondent,

v.

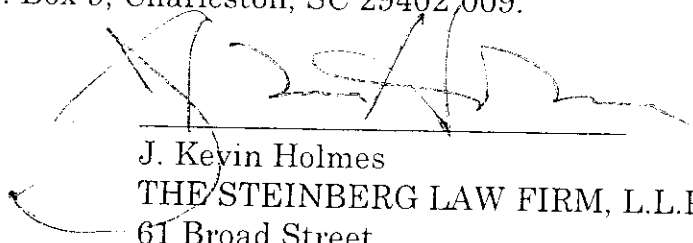
Spartanburg County and
S.C. Association of Counties
Self-Insurance Fund,

Petitioners.

PROOF OF SERVICE

I certify that I have served a copy of the respondent's Return for Petition for Certiorari by depositing it in the United States Mail, postage prepaid on August 23, 2019, addressed to attorneys of record L. Brenn Watson Esquire and Zachary M. Smith, Esquire, Wilson, Jones, Carter & Baxley, PA, 872 S. Pleasantburg Drive, Greenville, SC 29607; and on The Honorable Jenny Abbot Kitchings, Clerk of Court, SC Court of Appeals, P.O. Box 11629, Columbia, SC 29211; and on Chadwick D. Pyc, Esquire, P.O. Box 6346, Spartanburg, SC 29304; and on David T. Pearlman, Esquire The Steinberg Law Firm, P.O. Box 9, Charleston, SC 29402-009.

August 23, 2019



J. Kevin Holmes
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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SC Court of Appeals

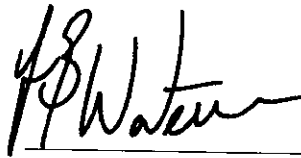
Case No. 2017-CP-42-3726

Raquel Martinez, Employee, Respondent,
v.
Spartanburg County Sheriff's Office, Employer
and South Carolina Association of Counties Self
Insurance Fund, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the Joint Motion for Stay and Suspension of Briefing Schedule on Respondent Raquel Martinez by depositing a copy of it in the United State Mail, postage prepaid, on November 4, 2019, addressed to her attorneys of record, Chadwick D. Pye, Esquire, Chadwick D. Pye, LLC, P.O. Box 6346, Spartanburg, South Carolina 29304 and J. Kevin Holmes, Esquire & David T. Pearlman, Esquire, The Steinberg Law Firm, P.O. Box 9, Charleston, South Carolina 29402-0009.

November 4, 2019



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November 4, 2019

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Columbia, SC 29211

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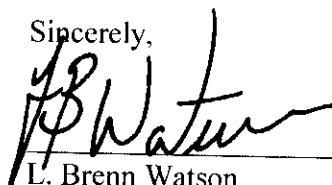
Re: Raquel Martinez vs. Spartanburg County
Appellate Case No. 2019-001382
WCC File No.: 0515098 DOI: 4/4/2005
Carrier: South Carolina Association Of Counties - Claim No.: 58-218332
WJC&B File No.: 0560.00114

Dear Ms. Kitchings:

Enclosed for filing, please find the original and six (6) copies of the Parties' Joint Motion for Stay and Suspension of Briefing Schedule. Also enclosed are the following:

- (1) Proof of Service of the Joint Motion for Stay and Suspension of Briefing Schedule; and
- (2) A filing fee of \$50.00.

Sincerely,



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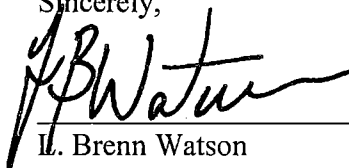
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WJC&B File No.: 0560.00114

Dear Ms. Kitchings:

Enclosed for filing, please find the original and six (6) copies of Appellants' Motion for Extension of Time to File Appellants' Initial Brief. Also enclosed are the following:

- (1) Proof of Service of the Motion for Extension of Time to File Appellants' Initial Brief; and
- (2) A filing fee of \$50.00.

Sincerely,



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